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No. _____

In The

Supreme Court of the United States

October Term, 1996

MARIO SALINAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. The Defendant, Mario Salinas, was a deputy sheriff employed by the Office of the Sheriff of Hidalgo County. Counts 3 and 4 of the indictment charged him with Federal Bribery violations under 18 U.S.C. Section 666. The case against him does not meet the prerequisites for such a federal prosecution. The facts do not bring it within the class of cases for which there can be a conviction under 18 U.S.C. Section 666 because the Sheriff's Office did not receive federal assistance during the relevant time periods as required by the statute. 18 U.S.C. Section 666(b). The question presented here is:

Are payments made by the federal government to the Sheriff's Office for the housing of federal prisoners in the county jail federal assistance or simply payments in return for services rendered?

II. The case against Salinas does not meet the prerequisites for a federal prosecution under 18 U.S.C. Section 666 the Federal Bribery Statute because no federal funds were in any manner impinged upon. The case involved bribery from a prisoner in return for contact visits. It had nothing whatsoever to do with the disbursement of or impingement upon federal, or even state or local, funds. The question presented here is:

What kind of cases involving state employees are subject to prosecution under the Federal Bribery Statute 18 U.S.C. Section 666? Do such cases include cases where no federal funds are disbursed or impinged?

QUESTIONS PRESENTED – Continued

III. Counts 1 and 2 of the indictment cover RICO substantive and RICO conspiracy respectively. The RICO substantive statute requires that the government prove two predicate acts before a defendant can be found guilty. Salinas was found not guilty of Count 1 (RICO substantive). Salinas contends that before he could be found guilty of RICO conspiracy the government must have proven that Salinas personally committed or agreed to commit two RICO predicate acts.

The trial court did not charge the jury in this manner and, in fact, required no acts on Salinas' part. The question presented here is:

Before a defendant can be found guilty of the Conspiracy provisions of the RICO statute, must the government prove that he personally committed or agreed to commit two RICO predicate acts?

IV. The law on this issue, prior to the opinion by the Fifth Circuit in this case, was such that before Salinas could be found guilty of RICO conspiracy the government must have proven that Salinas personally committed or agreed to commit two RICO predicate acts. The Fifth Circuit opinion changed the law so as to not require any predicate acts. The question presented here is:

Are a Defendant's due process rights violated when there is such a basic change in the law on criminal responsibility?

V. There were two search warrants issued searching for a specific item, i.e. two RADO watches. One search

QUESTIONS PRESENTED – Continued

warrant was issued for Salinas' home, the other for his office. The RADO watches were found in his home. The law requires that a search warrant be supported by probable cause that the evidence will be found in a particular place. There was none in this case. This is a classic fishing expedition. The question presented here is:

Is the Fourth Amendment requirement of probable cause violated when there is no information in the search warrant that would indicate that an item of evidence can be found in a particular place?

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PETITION FOR WRIT OF CERTIORARI

Mario Salinas respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on July 17, 1996, in order to resolve the conflicts between the Fifth, First, Second, Third and Tenth Courts of Appeals on the important issues presented herein, to resolve conflicts between the Fifth Circuit and Supreme Court and to resolve Constitutional issues based on the Fourth and Fifth Amendments, to the United States Constitution.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit that gives rise to this petition is published. App. 1. By order filed August 15, 1996, the Fifth Circuit denied the petition for rehearing and suggestion for rehearing en banc. App. 2.

JURISDICTION

The district court imposed sentence on Salinas on November 23, 1994. Salinas timely appealed to the Fifth Circuit, which affirmed in an opinion filed on July 17, 1996. On August 15, 1996, the Fifth Circuit denied Salinas timely-filed motion for rehearing and suggestion for rehearing en banc. Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of the denial of rehearing.

The jurisdiction of the court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN THIS CASE

Fourth and Fifth Amendments to the U.S. Constitution

18 U.S.C. Section 666

18 U.S.C. Section 1961

18 U.S.C. Section 1962

18 U.S.C. Section 4002

(See App. 3 for text of statutes)

STATEMENT OF THE CASE

On or about June 1991 Homero Beltran, a federal prisoner, was placed in the Hidalgo County Jail, Hidalgo County, Texas, by the U.S. Marshall's office. He remained there until approximately March or April of 1992 at which time he was moved to other institutions eventually being placed in a federal penitentiary. During this first stay he pled guilty in January 1992 to a number of federal drug violations. On or about November of 1992 Beltran was returned again at the Marshall's direction to the Hidalgo County Jail. He was kept there pending a case against an associate of his against whom he was supposed to have testified. His stay this time ended in April 1993.

He has claimed that during this time he and his brother-in-law Juan Antonio Guardado paid numerous bribes to Brigido Marmolejo, Sheriff of Hidalgo County in return for the Sheriff arranging and allowing contact and conjugal visits. According to Beltran most of these visits took place in the Sheriff's personal office.

Defendant Mario Salinas at all times important to this prosecution was a deputy sheriff and held the title of a Chief Deputy. He was assigned the duties of managing the jail in Hidalgo County, its employees and prisoners. The hierarchy of the Sheriff's Department shows the Sheriff as the head, with Deputy Bob Davis immediately below the Sheriff. Reporting to Bob Davis and the Sheriff, the next level is the "Chief Deputies". Below the Chief Deputies were Captains and Lieutenants, and so forth.

The testimony showed that the persons entitled to grant contact visits were the Sheriff, Bob Davis, the Chiefs, the Captains and in some instances the Lieutenants. Contact visits are visits where the prisoner actually has physical contact with the visitor.

Defendant Salinas was indicted for allegedly participating in this bribe scheme in return for contact visits for the prisoner Homero Beltran. The original indictment included allegations of bribery involving another prisoner, but those charges were dismissed by the Government upon resting its case.

REASONS FOR GRANTING THE WRIT

I. The Fifth Circuit's Opinion Directly Conflicts With The Supreme Court's Opinion In *Logue* Which Establishes The Commercial Nature Of The Relationship Between The Sheriff's Office And The United States Government.

Before an individual can be found liable under Section 666, the Government is required to prove that the organization the individual worked for received federal assistance during the relevant time period. 18 U.S.C. Section 666 (b).

The Government has sought to base the applicability of Section 666 on an alleged contract for services between the Hidalgo County Sheriff's Office and the United States Marshall's Service. It relied on a contract between the Sheriff's Office for the housing of Federal Prisoners and payments made thereunder. App. 4.

No Federal program and no Federal assistance is involved.

This contract is made pursuant to 18 U.S.C. Section 4002 entitled "Federal Prisoners in State Institutions; Employment." However, the Supreme Court of the United States has firmly established the nature of the relationship created by such contracts. *Logue v. United States*, 412 U.S. 521 (1973).

> Though petitioners do not always distinguish between their two theories, they appear to contend alternatively that the Nueces County jail is a "Federal agency" by reason of its contract for the care of federal prisoners, or that the employees of the jail are "acting on behalf of"

> the Bureau of Prisons or the Government in performing services for federal prisoners. The Court of Appeals rejected these contentions, and we believe that it was right in doing so.

Id. at 526. The role of the Sheriff's Office in this case was defined as that of an independent contractor.

> Thus, Congress not only authorized the Government to make contracts such as the one here in question, but rather clearly contemplated that the day-to-day operations of the contractor's facilities were to be in the hands of the contractor, with the Government's role limited to the payment of sufficiently high rates to induce the contractor to do a good job.

Id. at 529.

Obviously, there is no federal assistance here. This issue has also been foreclosed against the Government by the legislative history of Section 666. *United States v. Stewart*, 727 F. Supp. 1068, 1072 (N.D. Tex. 1989).

At trial, the Government's witness on these matters testified unequivocally that the payments made were contract payments for services rendered and that they were not grant money, federal assistance or anything of that nature. App. 5.

In summary, the contract funds the Government rely on do not give rise to a Federal Crime under Section 666.

II. The Fifth Circuit's Opinion Directly Conflicts With The Second Circuit Decision In *Foley* And The Third Circuit Decision In *Cicco* Which Indicate That The Type Of Actions Prosecuted In Salinas Do Not Fall Under The Federal Bribery Statute.

The Government complains of the alleged contact visits given, supposedly in return for consideration received by the defendants. The statute makes it an offense for someone to corruptly solicit or demand, or accept, or agree to accept, anything of value from any person with intent to be influenced or rewarded in connection with any "business, transaction, or series of transactions . . . involving value of $5,000.00 or more." 18 U.S.C. Section 666 (a) (1) (B).

However, this case does not involve any granting of contracts in return for kickbacks, accepting of bids, embezzling of government money, theft of government property, granting of leases in return for payoffs, or anything of that nature. The statute simply does not apply.

In the case of *United States v. Cicco*, 938 F. 2d 441 (3rd Cir. 1991), the defendants were charged under Section 666 for alleged corrupt solicitation of political services and loyalty in exchange for municipal jobs.

The court reviewed in depth the legislative history of the statute and the case law interpreting it. The court held, "It is thus apparent that the crimes Congress targeted when it created Section 666 are simply different in kind than those alleged in the case at bar." *Id.* at 445. The court found that the conduct upon which the indictment was based was simply not a "transaction of a local government" and that Section 666 was ambiguous. *Id.* at 444.

In the case presently before this Court the Government has not alleged and cannot show any transactions of the nature proscribed by the statute.

Additionally, "The Senate Report specifically states that the new statute, section 666, was intended to . . . 'protect the integrity of the vast sums of money distributed through federal programs from . . . undue influence by bribery. . . . ' The emphasis was on protecting federal funds." *United States v. Wyncoop*, 11 F. 3d 119, 122 (9th Cir. 1993). No federal funds were in any manner impinged upon, nor was any proof submitted on this issue.

Finally, as noted in *United States v. Foley*, 73 F. 3d 484, 493 (2d Cir. 1996), if the act has "affected neither the financial interests of the protected organization nor federal funds directly" there is no violation.

III. The Fifth Circuit's Opinion On The Issue Of RICO Conspiracy Elements Is Directly In Conflict With The First Circuit Decision In *Carrozza*, The Second Circuit Decision In *Ruggiero* And The Tenth Circuit Decision In *Sanders*.

The Court's instructions to the jury allowed a finding of guilt to conspiracy without the necessity of the jury finding that this defendant either actually committed two or more of the alleged racketeering acts or that he agreed personally to perform two or more of the specific acts. The defendant, to be found guilty of RICO conspiracy, must have committed or have agreed to commit at least two separate crimes in furtherance of the conspiracy. *United States v. Phillips*, 664 F.2d 971, 1039 (5th Cir. 1981), cert. denied, 457 U.S. 1136, 102 S.Ct. 2965 (1982); *United*

States v. Elliot, 571 F. 2d 880, 902 (5th Cir. 1978); *United States v. Carrozza*, 4 F. 3d 70, 79 n.8 (1st Cir. 1993), cert. denied, 114 S.Ct. 1644 (1994); *United States v. Ruggiero*, 726 F. 2d 913, 921 (2d Cir.), cert. denied, 469 U.S. 831 (1984); *United States v. Sanders*, 929 F. 2d 1466, 1473 (10th Cir.), cert. denied, 502 U.S. 846 (1991). *See also, United States v. Marcello*, 876 F. 2d 1147, 1153 (5th Cir. 1989) (two predicate acts required to sustain a RICO Conspiracy); *United States v. Faulkner*, 17 F. 3d 745, 773 (5th Cir. 1994) ("We need not resolve this issue").

The conspiracy case against Salinas was tried by the government under these theories.

Despite this the Court instructed the jury that Defendant Salinas could be found guilty of RICO conspiracy even if he was not involved in any predicate acts. App. 6. This was error.

Apparently it was the intent of the trial court to either test the Fifth Circuit's prior rulings on this matter or to bring about a change in the law to conform to what it believed to be the law of some other circuits.

> The Court: And there's this problem that there's some old Fifth Circuit cases that arguably mean something else.
>
> Now, the Eleventh Circuit, supposedly has now said that the fifth circuit probably never meant that and wouldn't mean it today. That case you all gave me a month ago says, 'well, we don't need to reach that', but I'm just saying that even if I get reversed on it, at least we'll get the law cleared up.

App. 7.

Even under other circuits' standard the Salinas conspiracy count would still have been charged in the manner required. For example, an Eleventh Circuit case which discusses this issue in depth and with extended analysis is *United States v. Carter*, 721 F. 2d 1514 (11th Cir. 1984). Yet, the holding in that case would mandate a submission of the kind requested.

> In summary, we hold that where the government's evidence establishes that a defendant agreed to participate in a conspiracy with a single objective, the requisite pattern of racketeering necessary to the objective of a RICO conspiracy is lacking. Only by demonstrating that the defendant agreed to personally commit two or more predicate acts is this lack cured. In a case of this type, the trial court must instruct the jury that an essential element of a RICO conspiracy charge is an agreement to participate in the enterprises's affairs by personally committing, or agreeing to personally commit, two or more predicate acts.

Id. at 1531. Eventually, the Salinas case was submitted on one prisoner, involving one bribe scheme – that is, one objective. The trial court recognized this when it stated, "I mean, granted, it's one arrangement. . . . " App. 8. Therefore, even under an Eleventh Circuit analysis the RICO conspiracy counts would have been submitted in a manner which required the jury to find that Salinas had agreed to personally perform two or more predicate acts.

This issue is worthy of Supreme Court consideration because the Fifth Circuit panel decision makes a fundamental change in conspiracy law as it applies to RICO. The panel opinion *at best* views the prior Fifth Circuit case law on this point as vague and obfuscating. The conflict is something trial courts must deal with, and do grapple with. The conflict creates great uncertainty as to what a court must instruct a jury and how a defendant must defend himself and what kind of actions constitute criminal violations.

IV. The Trial Court's Instruction To The Jury On RICO Conspiracy And The Fifth Circuit's Opinion On The Issue Of RICO Elements Changes Prior Law On The Subject And, Consequentiy, Denied Salinas Constitutional Right To A Fair Trial And Due Process.

As noted above, it was the intent of the trial court to either test the Fifth Circuit's prior rulings on this matter or to bring about a change in the law to conform to what it believed to be the law of some other circuits.

> The Court: And there's this problem that there's some old Fifth Circuit cases that arguably mean something else.
>
> Now, the Eleventh Circuit, supposedly has now said that the fifth circuit probably never meant that and wouldn't mean it today. That case you all gave me a month ago says, 'well, we don't need to reach that', but I'm just saying that even if I get reversed

> on it, at least we'll get the law cleared up.

App. 7.

Where there is doubt as to whether a conviction is predicated on an impermissible ground the conviction should be vacated. *See Stromberg v. California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). Also, the rule of lenity would apply in this case and require a dismissal. *United States v. Hartec Enterprises, Inc.*, 967 F. 2d 130, 133 (5th Cir. 1992). It also appears that due process considerations would prohibit a change in the law applying retroactively to this case and this defendant. Fifth Amendment to the Constitution.

Where standards are applied retroactively to the potential detriment of a defendant in a criminal case the Due Process Clause is implicated and a conviction based on such standards will be reversed. *Marks v. United States*, 430 U.S. 188, 196, 97 S.Ct. 990, 995, 51 L.Ed. 2d 260 (1977). In that case, the various circuit courts of appeal applied the new standards in differing ways. Some applied the standards retroactively, some did not. 430 U.S. at 189 n. 1. The Court stated that although the Ex Post Facto Clause of the U.S. Constitution did not apply directly to the judicial branch, the principles it enunciates apply by virtue of the Fifth Amendment. 430 U.S. at 191 and 192. "[T]he notion that persons have a right to fair warning of that conduct which will give rise to criminal penalties – is fundamental to our concept of constitutional liberty." 430 U.S. at 191.

The conspiracy case against Salinas was tried by the government under the belief that the law required the

government to prove in a RICO conspiracy that the defendant personally committed or agreed to commit two or more of the alleged predicate acts.

> Mr. Surovic: Your honor, my understanding of the racketeering conspiracy case-law is that cases have been overturned when it was unclear from the record which particular racketeering acts, especially if they were less than . . . you know, less than two racketeering acts, were identified with each individual. Each individual has to be identified with at least two specific racketeering acts.

App. 9.

The wider net established in the present Salinas case should not apply. The panel opinion *at best* views the prior Fifth Circuit case law on this point as vague and obfuscating. The case was tried under a theory which would require a jury to find two predicate acts. It would seem that a defendant, under these circumstances, is not adequately placed on notice on what he must defend against and how he must defend himself.

V. The Search Warrant Lacked Probable Cause Because It Was A Classic Fishing Expedition And, Consequently, Violated Salinas' Constitutional Protection Against Unreasonable Search and Seizure.

A warrant is supported by probable cause if "given all the circumstances set forth in the Affidavit, there is a fair probability that contraband or evidence of a crime

will be found *in a particular place." United States v. McKeever*, 5 F. 3d 863, 865 (5th Cir. 1993) (emphasis added); *see Illinois v. Gates*, 462 U.S. 213, 239 (1983). As to the watches, there is no indication in the search warrant affidavit as to where the watches might be located. This is a classic fishing expedition. In fact, *both* the Salinas warrants, the one for the office *and* the one for his home, list the watches. It is obvious the Government had no information *where* the watches might be located and, instead, they went on a hopeful fishing expedition. App. 10. It had no information that the watches would be found in a particular place. Therefore, there was an unlawful search and seizure. No nexus was shown. *See United States v. Garcia*, 27 F. 3d 1009 (5th Cir.), cert. denied sub nom., *Chavez v. United States*, 115 S.Ct. 531, 130 L.Ed. 2d 435 (1994); *United States v. Laury*, 985 F. 2d 1293 (5th Cir. 1993).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX 1

UNITED STATES of America,
Plaintiff-Appellee,

v.

Brigido MARMOLEJO, Jr. and Mario Salinas, Defendants-Appellants.

No. 94-60812.

United States Court of Appeals,
Fifth Circuit.

July 17, 1996.

Appeal from the United States District Court for the Southern District of Texas.

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

EMILIO M. GARZA, Circuit Judge:

Brigido Marmolejo, Jr. and Mario Salinas, the former Sheriff and Chief Deputy Sheriff of Hidalgo County, Texas were convicted of various offenses arising from a series of bribes that Marmolejo received, and Salinas aided and abetted, in exchange for permitting conjugal visits for a federal prisoner housed at the Hidalgo County Jail. Marmolejo appeals his conviction and his sentence. Salinas appeals only his conviction. We affirm both defendants' convictions and Marmolejo's sentence.

I

While Marmolejo was the Sheriff of Hidalgo County, Texas, Homero Beltran-Aguirre (Beltran) was a federal prisoner housed at the Hidalgo County Jail pursuant to an agreement between the United States Marshals Service and Hidalgo County.[1] As Sheriff of Hidalgo County, Marmolejo was in charge of the operation of the Hidalgo County Jail. Salinas was Marmolejo's immediate subordinate as the Divisional Chief for Detention of the Hidalgo County Sheriff's Office.

Beltran was housed at the Hidalgo County Jail on two separate occasions: first, from June 7, 1991 to April 14, 1992, and second, from November 6, 1992 to April 26, 1993. The series of bribes comprising the pattern of racketeering charged in the indictment against Marmolejo and Salinas occurred during these periods.

As a result of the bribery scheme between Marmolejo and Beltran, Marmolejo and Salinas were convicted of numerous offenses. A jury found Marmolejo guilty of violating RICO, in violation of 18 U.S.C. § 1962(c), RICO conspiracy, in violation of 18 U.S.C. § 1962(d), two counts of bribery in relation to a program receiving more than $10,000 in federal funds, in violation of 18 U.S.C. § 666(a)(1)(B) and 18 U.S.C. § 2, aiding and abetting money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i) and 18 U.S.C. § 2, two counts of money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), and travel in interstate commerce to promote bribery, in violation of 18 U.S.C. § 1952(a)(3). A jury found Salinas

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[1] This agreement is described in detail in Part II *infra*.

guilty of RICO conspiracy, in violation of 18 U.S.C. § 1962(d), and two counts of bribery in relation to a program receiving more than $10,000 in federal funds, in violation of 18 U.S.C. § 666(a)(1)(B) and 18 U.S.C. § 2. Both defendants filed timely appeals.

II

Marmolejo and Salinas argue several points of error concerning their convictions for bribery under 18 U.S.C. § 666(a)(1)(B), which prohibits theft and bribery by officials of state and local agencies that receive federal funds.[2] We review questions of statutory interpretation *de novo*. *United States v. Westmoreland*, 841 F.2d 572, 576 (5th Cir.), *cert. denied*, 488 U.S. 820, 109 S.Ct. 62, 102 L.Ed.2d 39 (1988). "Courts in applying criminal laws generally must

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[2] Section 666 applies to an "organization, government, or agency [that] receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance." 18 U.S.C. § 666(b).

The section under which the defendants were convicted punishes anyone who:

> (a)(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof –
>
> > (B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more. . . .

18 U.S.C. § 666(a)(1)(B).

follow the plain and unambiguous meaning of the statutory language. '[O]nly the most extraordinary showing of contrary intentions' in the legislative history will justify departure from that language." *United States v. Albertini*, 472 U.S. 675, 680, 105 S.Ct. 2897, 2902, 86 L.Ed.2d 536 (1985) (citations omitted) (quoting *Garcia v. United States*, 469 U.S. 70, 75, 105 S.Ct. 479, 482, 83 L.Ed.2d 472 (1984)).

A

Section 666(b) restricts the statute to agencies that receive "in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance or other form of Federal assistance." 18 U.S.C. § 666(b). The defendants contend that the district court did not have jurisdiction to try the bribery counts under 18 U.S.C. § 666 because Hidalgo County did not receive "benefits in excess of $10,000 under a Federal program" or any "other form of Federal assistance." *Id.*

The parties dispute whether it is proper, in determining whether Hidalgo County Jail received Federal assistance, to focus on (1) a Cooperative Agreement Plan (CAP), which provided a $850,000 grant for construction at the Hidalgo County Jail, *and* an Intergovernmental Service Agreement (IGA), which provided that Hidalgo County Jail would house federal prisoners in exchange for their costs, or (2) just IGA.[3] This issue is relevant not

[3] The government contends that CAP and IGA together constituted a Federal program under § 666(b). The defendants argue that the construction grant issued pursuant to CAP is irrelevant to an analysis of what, if any, Federal assistance the Hidalgo County Jail received while Beltran was in the jail. They argue that because CAP was entered into and completed in 1984 and the bribery scheme occurred between 1991 and 1993, CAP could not qualify as Federal assistance received in a one year period before or after the date of the commission of the offense. *See* 18 U.S.C. §§ 666(b) and 666(d)(5). The defendants argue further that IGA does not qualify as "Federal assistance" or a "Federal program" because it was simply a contract for services rendered, and thus a commercial transaction exempted from the statute by §§ 666(b) and (c).

only to determine whether the arrangement constituted a Federal program or Federal assistance, but also to determine whether Hidalgo County satisfies the requirement that it received the benefit within a one year period.[4]

The plain language of § 666(b) is ambiguous in defining "Federal program" and "Federal assistance." Although it is clear that the assistance can consist of a

[4] Section 666(d)(5) defines a one-year period as "a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense." Because Hidalgo County received the $850,000 construction grant in 1984, and because the offenses committed in this case occurred from June 1991 to April 1992 and from November 1992 to July 1993, and assuming that only CAP is a Federal program under § 666(b), Hidalgo County would not have received the required amount of benefit within the relevant one-year period. However, if IGA and CAP should be viewed collectively as one agreement, and the agreement constitutes a Federal program, then the one-year requirement would be met, because Hidalgo County received approximately $840,000 per year pursuant to IGA for housing federal prisoners *at cost* per CAP during the time that Beltran was housed at the jail.

grant, contract, subsidy, loan, guarantee, or insurance, the other defining qualities of "Federal assistance" are still unclear. The legislative history, however, provides that the term "Federal program involving a grant, a contract, a subsidy, a loan, a guarantee, insurance, or another form of Federal assistance" should be construed broadly. S.Rep. No. 225, 98th Cong., 2d Sess. 370 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3511 [hereinafter S.Rep. No. 225]. We must determine, therefore, whether under a broad interpretation of "Federal assistance," it is proper to analyze IGA and CAP collectively as a single agreement because they are so interrelated.

IGA and CAP were entered into in 1984 to establish and govern relations between the U.S. Marshals Service and Hidalgo County. CAP was the first agreement; it provided for "Federal participation in the funding of local governmental jail construction, renovation or improvement programs" and was "predicated upon the Federal government's requirement for detention space and services and the local government's provision of such services." As a condition to the receipt of this grant, Hidalgo County Jail had to guarantee that it would provide detention space for federal prisoners. The second agreement, IGA, established the actual formal relationship between the U.S. Marshals Service and other federal user agencies and Hidalgo County for the detention of federal prisoners. Although Hidalgo County had already guaranteed that it would provide such space, IGA established the specific provisions and requirements of the agreement including the compensation that Hidalgo County would receive.

These agreements are so interrelated that they must be viewed collectively as one agreement, especially given the fact that the grant issued pursuant to CAP was conditioned on the agreement in IGA. Having reviewed the nature and purposes of CAP and IGA, we conclude that together they constituted "Federal assistance" or a "Federal program" under 18 U.S.C. § 666(b), consisting of a grant, CAP, and a contract, IGA. Our holding is supported by the broad construction of § 666(b) mandated in the legislative history. S.Rep. No. 225 at 3511.

Focusing exclusively on IGA, the defendants argue that the arrangement between Hidalgo County and the U.S. Marshals Service was a commercial transaction. In urging that this is a commercial transaction, the defendants emphasize the fact that the U.S. Marshals Service received something in return for the funds it provided to Hidalgo County.[5]

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[5] The defendants appear to argue that as a "commercial transaction," this arrangement would be excluded from the statute by §§ 666(b) and (c). However, § 666(c), which excludes "bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business," refers to the alleged wrongdoing, to ensure that the statute is not applied to "acceptable commercial and business practices," H.R.Rep. No. 797, 99th Cong., 2d Sess. 30, *reprinted in* 1986 U.S.C.C.A.N. 6138, 6153, not to the nature of the benefit that the agency receives pursuant to the Federal program. *See United States v. Valentine*, 63 F.3d 459, 465 (6th Cir.1995) (declining to hold that the use of employees for personal benefit is in the usual course of business); *United States v. Grubb*, 11 F.3d 426 (4th Cir.1993) (declining to hold that salary obtained in exchange for $10,000 bribe was "bona fide"). *But see United States v. Nichols*, 40 F.3d 999, 1000 (9th Cir.1994) (applying § 666(c) to the nature of the Federal assistance). Certainly the defendants are not

The legislative history again demonstrates why the defendants' argument must fail. The Senate Report states that the goal in enacting 18 U.S.C. § 666 was to protect the integrity of federal funds by punishing theft and bribery involving Federal programs for which there is "a specific statutory scheme authorizing the Federal assistance in order to promote or achieve certain policy objectives." S.Rep. No. 225 at 3511. Focusing on this legislative history, the Second Circuit in *United States v. Rooney*, 986 F.2d 31, 35 (2d Cir.1993), rejected a *quid pro quo* argument similar to that argued by Marmolejo and Salinas. The *Rooney* court stated that the proper focus in determining whether federal funds constitute "Federal assistance" under § 666(b) is "whether the funds disbursed can be considered Federal assistance within a specific statutory scheme intended to promote public policy objectives and not payments by the government as a commercial entity." *Rooney*, 986 F.2d at 35. Finding that the statute equated "benefit" with "Federal assistance," the Second Circuit held that an Farmers Home Administration loan could constitute Federal assistance under § 666(b), despite the fact that the defendant was obligated to repay the loan plus interest, because the money the defendant received was authorized by a specific statute to accomplish specific policy goals established by Congress. *Id.* at 34-35.

Likewise, in this case, the funds that the federal government provided for Hidalgo County were authorized by a specific statute and were intended to further

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arguing that the money they received from Beltran or the benefit that Beltran received from them was "bona fide" and "in the usual course of business." 18 U.S.C. § 666(c).

public policy goals. The fact that Hidalgo County housed federal prisoners in return for the money it received from the United States Marshals Service does not preclude the arrangement from being a Federal program under § 666(b). The federal funds were authorized by 18 U.S.C. § 4002 to fulfill the federal government's policy of providing "suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress," 18 U.S.C. § 4002, and as stated in CAP, to provide for "[f]ederal participation in the funding of local governmental jail construction, renovation or improvement programs." Therefore the combination of CAP and IGA qualifies as a Federal program under § 666(b), regardless of the fact that the government received something in return for the assistance it provided to Hidalgo County.[6]

B

The defendants next argue that they were "improperly prosecuted" under 18 U.S.C. § 666(a)(1)(B). They argue that in enacting 18 U.S.C. § 666, Congress did not intend to reach their behavior. Specifically, they contend that there was not a business, transaction, or series of transactions "involving anything of value of $5,000 or more," as required under § 666(a)(1)(B).

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[6] Because we hold that IGA and CAP together constitute a Federal program, Hidalgo County meets the one-year requirement as defined in 18 U.S.C. 666(d)(5), because it received $840,000 a year for housing federal prisoners during the period in which the offenses were committed.

Section 666(a)(1)(B) requires the government to prove that agents of a local government solicited, demanded, accepted, or agreed to accept anything of value from any person intending to be influenced "in connection with any business, transaction, or series of transactions of such government . . . involving anything of value of $5,000 or more." 18 U.S.C. § 666(a)(1)(B). The evidence at trial demonstrated that Beltran was housed at the Hidalgo County Jail, pursuant to an IGA. After observing that several of the federal prisoners were receiving special treatment at the jail, Beltran entered into an agreement with Marmolejo to receive special treatment in exchange for monetary consideration. Specifically, Marmolejo allowed Beltran to have conjugal visits with his wife and girlfriend in exchange for $6,000 a month and $1,000 per visit. These visits took place in the jail library and eventually in Sheriff Marmolejo's office.

The evidence also disclosed that Marmolejo told Beltran's brother-in-law, Guardado, who often arranged the visits, that if Marmolejo was not available, he could contact Salinas about arranging a visit. Marmolejo usually guarded his office door when Beltran and his wife or girlfriend were visiting. However, Salinas supervised the visits on several occasions. The evidence also established that Beltran instructed Guardado to purchase four sets of men and women's Rado watches, one set of which was given to Salinas and one set to Marmolejo. Both Salinas and Marmolejo also received cars from Beltran. Marmolejo was also involved in numerous financial transactions with Beltran.

We have previously held that § 666(a)(1)(B) does not require the government to prove that federal funds were

directly involved in a bribery transaction, or that the federal monies funded the corrupt transaction. *Westmoreland*, 841 F.2d at 578 (upholding conviction of a county supervisor under § 666(a)(1)(B) for taking bribes in connection with the granting of contracts for the maintenance of local roads and bridges although the funds corruptly disbursed were not federal funds). Therefore, although the government did not have to trace any federal funds to the illegal transaction between Beltran and Marmolejo and Salinas, we must consider whether the term "anything of value" in § 666(a)(1)(B) was intended to cover transactions involving intangibles, such as a conjugal visit, that are difficult to value.

We turn first to the plain language of the statute. The term *"anything* of value" in § 666(a)(1)(B) is broad in scope and contains no language restricting its application to transactions involving money, goods, or services. Similarly, the statute does not require that the organization, government, or agency or the person giving the agent the bribe, valued the transaction at $5,000 or more. We hold, therefore, that the plain meaning of the statute compels our conclusion that the term "anything of value" in § 666(a)(1)(B) includes transactions involving intangible items, such as the conjugal visits at issue in this case.[7]

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[7] We note that the dissent's belief that the relevant language of § 666(a)(1)(B) is ambiguous, directly contradicts our finding in *Westmoreland*, 841 F.2d at 576. In *Westmoreland*, we rejected the defendant's argument that "sufficient statutory ambiguity exists to invoke the rule of strict construction applicable to criminal statutes and the rule that congressional intent, as evidenced by the legislative history, controls," because we found the statutory language "plain and unambiguous." *Id.* at 575-76.

See United States v. Mongelli, 794 F.Supp. 529, 531 (S.D.N.Y.1992) (holding that term "anything of value" in 18 U.S.C. § 666(a)(1)(B) includes intangibles).

This broad language squares with Congress's intent in enacting 18 U.S.C. § 666 to safeguard "the integrity of federal funds by assuring the integrity of the organizations or agencies that receive them." *Westmoreland*, 841 F.2d at 577, 578. The Senate Report stated that:

> [18 U.S.C. § 666 was] designed to create new offenses to augment the ability of the United States to vindicate significant acts of theft, fraud, and bribery involving Federal monies that are disbursed to private organizations or State and local governments pursuant to a Federal program.

S.Rep. No. 225 at 3510. Specifically, the statute was intended to fill a gap in the then-current federal bribery and theft statutes caused by the difficulty of tracing federal monies.[8] To accomplish its goal, Congress "cast a

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[8] The Senate Report described the then-existing state of the law:

> [T]itle XI covers both theft and bribery type offenses. With respect to theft, 18 U.S.C. § 665 makes theft or embezzlement by an officer or employee of an agency receiving assistance under the Job Training Partnership Act a Federal offense. However, there is no statute of general applicability in this area, and thefts from other organizations or governments receiving Federal financial assistance can be prosecuted under the general theft of Federal property statute, 18 U.S.C. § 641, only if it can be shown that the property stolen is property of the United States. In many cases, such prosecution is impossible because title has passed to the recipient before the property is stolen, or the funds are so commingled that the Federal character of the funds cannot be shown. This situation gives rise to a serious gap in the law, since even though title to the monies may have passed, the Federal Government clearly retains a strong interest in assuring the integrity of such program funds. Indeed, a recurring problem in this area (as well as in the related area of bribery of the administrators of such funds) has been that State and local prosecutors are often unwilling to commit their limited resources to pursue such thefts, deeming the United States the principal party aggrieved.
>
> With respect to bribery, 18 U.S.C. 201 generally punishes corrupt payments to Federal public officials, but there is some doubt as to whether or under what circumstances persons not employed by the Federal Government may be considered as a "public official" under the definition in 18 U.S.C. 201(a). . . .

S.Rep. No. 225 at 3510.

broad net to encompass local officials who may administer federal funds, regardless of whether they actually do." *Id.* at 577.

We also note that other courts have interpreted the term "anything of value" in criminal statutes broadly to include intangibles. *See United States v. Nilsen*, 967 F.2d 539, 542 (11th Cir.1992) (stating that "Congress' frequent use of 'thing of value' in various criminal statutes has evolved the phrase into a term of art which the courts generally construe to envelope both tangibles and intangibles"), *cert. denied*, 507 U.S. 1034, 113 S.Ct. 1856, 123 L.Ed.2d 478 (1993); *United States v. Picquet*, 963 F.2d 54, 55 (5th Cir.) (holding that the term "anything of value" in 18 U.S.C. § 1029(a)(2) should be interpreted broadly), *cert.*

denied, 506 U.S. 902, 113 S.Ct. 290, 121 L.Ed.2d 215 (1992); *United States v. Girard*, 601 F.2d 69, 71 (2d Cir.) (holding that term "thing of value," when used in criminal statutes, such as in 18 U.S.C. § 641, includes intangibles, such as amusement, sexual intercourse, a promise to reinstate an employee, and information), *cert. denied*, 444 U.S. 871, 100 S.Ct. 148, 62 L.Ed.2d 96 (1979); *see also United States v. Williams*, 705 F.2d 603, 622-23 (2d Cir.) (holding that term "anything of value" in 18 U.S.C. § 201(c) and 18 U.S.C. § 201(g) can apply to stock that, although it had no actual value, the defendant expected it to have value), *cert. denied*, 464 U.S. 1007, 104 S.Ct. 524, 78 L.Ed.2d 708 (1983); *McDonald v. State*, 57 Ala.App. 529, 329 So.2d 583, 587-88 (1975) (holding that sexual intercourse or the promise of sexual intercourse is a "thing of value" under state bribery statute), *cert. denied*, 429 U.S. 834, 97 S.Ct. 99, 50 L.Ed.2d 99 (1976); *Scott v. State*, 107 Ohio St. 475, 141 N.E. 19, 22-23 (1923) (same).

Because the conduct in this case involves serious acts of bribery by agents of a local government who were carrying out their duties under a Federal program, we conclude that this case is within the scope of conduct Congress intended to encompass with 18 U.S.C. § 666.[9]

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[9] The defendants argue that even if their actions meet the literal definition of the statute, Congress did not intend to punish their type of behavior in enacting 18 U.S.C. § 666. Again, the legislative history supports our finding that this prosecution was proper. The Senate Report stated that Congress intended 18 U.S.C. § 666 to encompass behavior in three specific cases, each of which involved an organization or agency that provided the Federal government with a service by administering a government program, much like the Hidalgo County Jail did in this case. S.Rep. No. 225 at 3511 (citing *United States v. Hinton*, 683 F.2d 195 (7th Cir.1982) (involving head of a nonprofit corporation organized to administer federal funds from a HUD program who solicited money in exchange for housing rehabilitation contracts funded by HUD), *aff'd sub nom. Dixson v. United States*, 465 U.S. 482, 104 S.Ct. 1172, 79 L.Ed.2d 458 (1984); *United States v. Mosley*, 659 F.2d 812 (7th Cir.1981) (involving head of state administrator of funds from a CETA program who solicited money in exchange for preferential treatment under the program); *United States v. Del Toro*, 513 F.2d 656 (2d Cir.) (involving bribery of city administrator of funds from HUD program), *cert. denied*, 423 U.S. 826, 96 S.Ct. 41, 46 L.Ed.2d 42 (1975).

Defendants cite *United States v. Cicco*, 938 F.2d 441 (3d Cir.1991), as support for their argument that Congress did not intend to reach their behavior in enacting 18 U.S.C. § 666. The facts of *Cicco*, however, do not support their argument. In *Cicco*, the defendants were indicted for soliciting political support in exchange for the retention of municipal jobs. The Third Circuit reasoned that the legislative history revealed that Congress enacted § 666 to enlarge those covered by federal bribery laws, not "the sort of 'political patronage harassments' alleged" in that case. *Id.* at 446 (quoting S.Rep. No. 1245, 94th Cong., 2d Sess. 2, *reprinted in* 1976 U.S.C.C.A.N. 2883, 2884). Because the defendants' behavior in *Cicco* was covered by another criminal statute, 18 U.S.C. § 601, which was " 'directed at protecting federally-funded employment from partisan favoritism,' " the court concluded that Congress did not intend to encompass such behavior under § 666. *Id.* The *Cicco* court was persuaded in particular by the fact that if the conduct at issue was covered by § 666 as well as § 601, the punishment would have been ten times as severe under § 666, and without any mention of § 601 in the legislative history, the *Cicco* court was not prepared to conclude that Congress intended such a result. *Id.* Instead, the court believed "Congress intended § 666 to address different and more serious criminal activity" involving theft and bribery. *Id.*

As Sheriff and Chief Deputy Sheriff of Hidalgo County, the defendants were in charge of carrying out the Federal

program of housing and safekeeping the federal prisoners, including Beltran, at Hidalgo County Jail. Part of their responsibilities pursuant to IGA was to provide and regulate the prisoners' visitation rights. As agents of the Hidalgo County Jail, Marmolejo and Salinas accepted money, watches, and cars intending to be influenced in connection with transactions of the jail, namely, the issuance and regulation of prisoner visits with family and friends. The transactions involved something of value – conjugal visits that Beltran was willing to pay for.

We must now determine whether these conjugal visits had a value of $5,000 or more. Again, we observe that the statute does not contain language "to indicate that 'any transaction involving $5,000' means 'any federally funded transaction involving $5,000' or 'any transaction involving $5,000 of federal funds.'" *Westmoreland*, 841 F.2d at 576. "[A]ny reference to federal funds is conspicuously absent from the operative provisions," allowing Congress to ensure the integrity of federal funds by protecting the integrity of the organizations that receive them. *Id.* at 577-78. The statute does not specifically require that the payor or the payee of the bribe value the transaction at $5,000.[10] Instead, the $5,000 triggering provision ensures that the statute reaches acts of

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[10] *Compare Westmoreland*, 841 F.2d at 576-78 (stating that the unambiguous language of § 666(a)(1)(B) does not require the government to establish any relation between the transaction involving a "thing of value of $5,000" and the federal funds the agency receives) *with United States v. Foley*, 73 F.3d 484, 490 (2d Cir.1996) (stating that § 666(a)(1)(B) was enacted to permit prosecution for bribery in connection with federal program funds, therefore, in determining whether a transaction involves "anything of value of $5,000 or more," the "value must be

bribery involving transactions of substantial value. *Id.* at 578. To decide whether a transaction involving intangibles has a value of $5,000 or more, courts should look to traditional valuation methods. *See Mongelli*, 794 F.Supp. at 531. We conclude that the conjugal visits in this case did have a value which exceeded $5,000. We arrive at this estimate in the same way that an appraiser would value an asset – by looking at how much a person in the market

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connected, even if only indirectly, to the integrity of federal program funds"). The dissent claims that *Foley* holds that "the proper method to value a transaction is from the perspective of the protected entity." However, *Foley's* only statement about assessing the "thing's value" states that it must be connected to the integrity of the federal program funds. *Foley*, 73 F.3d at 490. *Foley* does intimate that if the transaction involved in that case had affected the financial interests of the protected local organization, then that case *might* have been properly prosecuted under § 666(a)(1)(B). *Id.* at 492-93. However, the only decisive language in *Foley* concerns the fact that the federal program funds were not affected, even indirectly, by the transaction. *Id.* at 490, 492 & 493. We note that the plaintiff in *Westmoreland* could not have been convicted under § 666(a)(1)(B) under the holding in *Foley*. *Foley* requires a connection between the transaction's value of $5,000 or more and the integrity of the federal program funds that the government receives. The *Foley* court stated that the legislative history indicated that § 666(a)(1)(B) was "not designed for the prosecution of corruption that was not shown in some way to touch upon federal funds." *Foley*, 73 F.3d at 493. However, the plaintiff in *Westmoreland*, a county supervisor, was convicted of accepting bribes in exchange for effecting sales transactions worth $14,482.92. We upheld her conviction even though it was undisputed that the alleged acts of bribery concerned only state monies, not the federal funds that the county received. To the extent that the *Foley* court would have reversed her conviction under § 666(a)(1)(B), this case is in conflict with Fifth Circuit law.

would be willing to pay for them. *Id.*; *see also Herman v. United States*, 289 F.2d 362 (5th Cir.) (stating that to determine if the value of stolen property is $5,000 or more, as required in 18 U.S.C. § 2314, courts must look at "the price a willing buyer would pay a willing seller at the time and place the property was stolen"), *cert. denied*, 368 U.S. 897, 82 S.Ct. 174, 7 L.Ed.2d 93 (1961); *United States v. Seagraves*, 265 F.2d 876 (3d Cir.1959) (stating that amount defendants paid for stolen property can form basis for expert's valuation of the property under 18 U.S.C. § 2314). Pursuant to the bribery transactions, Beltran was willing to pay Marmolejo $6,000 a month plus $1,000 for each visit. Therefore, the transactions between Beltran and Marmolejo and Salinas involved something "of value of $5,000 or more." Accordingly, we conclude that Marmolejo and Salinas were properly prosecuted under 18 U.S.C. § 666(a)(1)(B).[11]

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[11] The defendants' final argument with respect to 18 U.S.C. § 666 is that the Sheriff's office is not an agent of a local government as required by § 666(a)(1). Section 666 applies to every "agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof." 18 U.S.C. § 666(a)(1). "Local" is defined as "of or pertaining to a political subdivision within a state." 18 U.S.C. § 666(d)(3). It is clear that this statute was intended to encompass all employees of all governmental agencies and their subdivisions. *See* 18 U.S.C. § 666(d)(2). The Hidalgo County Sheriff's office is an agency of Hidalgo County, and both defendants are agents of the Sheriff's office; therefore, they are covered by the statute.

Salinas also argues that there was insufficient evidence to convict him of aiding and abetting Marmolejo's violation of 18 U.S.C. § 666(a)(1)(B). After a careful review of the record, we conclude there was sufficient evidence to sustain the conviction.

III

At trial, the government alleged that the defendants violated TEX.PENAL CODE ANN. § 36.02(a)(1), which constituted "predicate acts establishing a pattern of racketeering activity" in violation of RICO.[12] *See* 18 U.S.C. § 1962(c). A state offense can only constitute a predicate act establishing a pattern of racketeering activity if the offense is punishable by more than one year in prison. 18 U.S.C. § 1961(1)(A). Salinas and Marmolejo allege that their prosecution under TEX.PENAL CODE ANN. § 36.02(a)(1) was improper because a more specific statute, TEX.PENAL CODE ANN. § 36.08(b), applies to their conduct.[13] They rely on a well-established rule of construction "that if two legal provisions apply, one general and one specific, the specific takes precedence." *United States v. Tunnell*, 667 F.2d 1182, 1185 (5th Cir.1982). While TEX.PENAL CODE ANN. § 36.02(a)(1) is a felony punishable by more than one year in prison, TEX.PENAL CODE ANN. § 36.08(b) is a misdemeanor which is not punishable by more than one year in prison. Therefore, if the defendants should have been

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[12] TEX.PENAL CODE ANN. § 36.02(a)(1) provides:

> A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter.

[13] TEX.PENAL CODE ANN. § 36.08(b) provides that "[a] public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency."

prosecuted under § 36.08(b) instead of § 36.02(a)(1), they would not have committed predicate acts constituting racketeering activity in violation of RICO.

Having reviewed the evidence against the defendants, we hold that they were properly charged under TEX.PENAL CODE ANN. § 36.02(a)(1), which prohibits accepting bribes, rather than § 36.08(b), which prohibits accepting gifts. The appropriate inquiry is which statute criminalizes the defendants' conduct here. *See Tunnell*, 667 F.2d at 1185 (concluding that defendants were properly charged under the statute which criminalized their exact behavior). The evidence at trial demonstrated an elaborate system of bribes between Marmolejo and Beltran, aided and abetted by Salinas. The cash payments, watches, and other consideration that the defendants received were not gifts; they were given as payment for conjugal visits and other special favors. Thus the defendants were properly convicted under the more serious statute, § 36.02(a)(1), which prohibited the exact behavior which they engaged in – bribery. *See Id.* at 1185; *Cerda v. State*, 750 S.W.2d 925, 927 (Tex.App. – Corpus Christi 1988, pet. ref'd).[14]

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[14] The defendants also argue that the government failed to prove that they were "public servant[s]" within the meaning of the statute and that they acted in a discretionary manner in allowing conjugal visits. TEX.PENAL CODE ANN. § 1.07(a)(41)(A) defines public servant as one who is "elected, selected, appointed, employed, or otherwise designated as . . . an officer, employee, or agent of government." Marmolejo was elected Sheriff of Hidalgo County which is an agent of government; therefore, he satisfies this broad definition of public servant. Salinas also satisfies the definition because he was either selected or appointed as an employee of Hidalgo County.

TEX.PENAL CODE ANN. § 36.02(a)(1) punishes the receipt of benefits in exchange "for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant." The defendants argue that as jailers they act in a ministerial, not a discretionary manner. This argument is also without merit. Conjugal visits were not permitted under Hidalgo County Jail policy. They were allowed in this case, only as a result of Marmolejo's exercise of discretion, aided and abetted by Salinas, in exchange for money and other types of consideration.

The defendants also argue that the government failed to prove that Beltran was in "custody." TEX.PENAL CODE ANN. § 36.02(a)(1) does not require custody; therefore, this argument is also without merit.

IV

Salinas appeals the trial court's jury instruction on the RICO conspiracy count,[15] arguing that it erroneously allowed the jury to convict him without proof that he performed or agreed to perform personally two of the predicate acts which comprise the pattern of racketeering

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[15] Salinas was charged with violating a substantive RICO provision, 18 U.S.C. § 1962(c), and with conspiring to violate a substantive RICO provision, 18 U.S.C. § 1962(d). He was acquitted of the substantive count, but convicted on the conspiracy count. Section 1962(d) provides that it is unlawful "for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." 18 U.S.C. § 1962(d). Section 1962(c) prohibits "any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c).

activity.[16] "While great latitude is shown the trial court in fashioning jury instructions, we will review [the instructions] to determine whether they accurately and completely state the law." *Banc One Capital Partners Corp. v. Kneipper*, 67 F.3d 1187, 1192 (5th Cir.1995).

Fifth Circuit cases have obfuscated the issue of whether each RICO conspirator must agree to commit personally two or more racketeering acts or whether it is sufficient that the conspirator simply agree that one of his co-conspirators will commit two or more racketeering acts.[17] This issue has divided the circuits, with the majority holding that a RICO conspirator need only agree "that members of the conspiracy will violate [a substantive RICO provision] through the commission of two proscribed acts," not that he will personally commit two

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[16] The trial court's instruction on the RICO conspiracy count stated:

> What you are being asked to decide in Count Two is . . . If Salinas was only involved in one or two or even none, did he, nevertheless, know about this pattern. Did he know that this whole pattern of activity was going on and did he then knowingly and willfully join in and participate and contribute in some fashion.

[17] Both the majority and the minority views on this issue ground their interpretation of § 1962(d) on *United States v. Elliott*, 571 F.2d 880 (5th Cir.), *cert. denied*, 439 U.S. 953, 99 S.Ct. 349, 58 L.Ed.2d 344 (1978). "However, a reading of *Elliott* in conjunction with the later case of *United States v. Sutherland*, 656 F.2d 1181 (5th Cir.1981) reveals that the Fifth Circuit had not definitively resolved this issue." *United States v. Neapolitan*, 791 F.2d 489, 496 n. 3 (7th Cir.), *cert. denied*, 479 U.S. 940, 107 S.Ct. 422, 93 L.Ed.2d 372 (1986).

proscribed acts.[18] *United States v. Neapolitan*, 791 F.2d 489, 494 (7th Cir.), *cert. denied*, 479 U.S. 940, 107 S.Ct. 422, 93 L.Ed.2d 372 (1986).

Our decision in *United States v. Elliott*, 571 F.2d 880 (5th Cir.), *cert. denied*, 439 U.S. 953, 99 S.Ct. 349, 58 L.Ed.2d 344 (1978), lays the groundwork for analyzing the present controversy. The issue in *Elliott* was whether the government can link together, under a RICO conspiracy charge, multiple conspiracies whose crimes may have no relation to each other except for their affiliation with a common criminal enterprise. *Id.* at 902-03. In answering this question affirmatively, we explained:

> the object of a RICO conspiracy is to violate a substantive RICO provision – here, to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity – and not merely to commit each of the predicate crimes necessary to demonstrate a pattern of

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[18] The majority consists of the Sixth, Third, Ninth, Eleventh, and Seventh Circuits. *See United States v. Joseph*, 781 F.2d 549, 554 (6th Cir. 1986); *United States v. Adams*, 759 F.2d 1099, 1116 (3d Cir.), *cert. denied*, 474 U.S. 971, 106 S.Ct. 336, 88 L.Ed.2d 321 (1985); *United States v. Tille*, 729 F.2d 615, 619 (9th Cir.), *cert. denied*, 469 U.S. 845, 105 S.Ct. 156, 83 L.Ed.2d 93 (1984); *United States v. Carter*, 721 F.2d 1514, 1529 (11th Cir.), *cert. denied sub nom., Morris v. United States*, 469 U.S. 819, 105 S.Ct. 89, 83 L.Ed.2d 36 (1984); *Neapolitan*, 791 F.2d at 497. The First and Second Circuits currently compose the minority, holding that a RICO conspirator must personally agree to commit two predicate acts. *See United States v. Ruggiero*, 726 F.2d 913, 921 (2d Cir.), *cert. denied sub nom., Rabito v. United States*, 469 U.S. 831, 105 S.Ct. 118, 83 L.Ed.2d 60 (1984); *United States v. Winter*, 663 F.2d 1120, 1136 (1st Cir.1981), *cert. denied*, 460 U.S. 1011, 103 S.Ct. 1250, 75 L.Ed.2d 479 (1983).

> racketeering activity. . . . Under the statute, it is irrelevant that each defendant participated in the enterprise's affairs through different, even unrelated crimes, so long as we may reasonably infer that each crime was intended to further the enterprise's affairs.

Id. at 902. Our subsequent cases have made it clear that to prove a RICO conspiracy "no actual acts of racketeering need occur; there need only exist a conspiracy to perform the necessary acts plus some overt action by one of the conspirators in furtherance of the conspiracy." *United States v. Phillips*, 664 F.2d 971, 1038 (5th Cir.1981) (citing *United States v. Sutherland*, 656 F.2d 1181, 1187 n. 4 (5th Cir.1981), *cert. denied*, 455 U.S. 949, 102 S.Ct. 1451, 71 L.Ed.2d 663 (1982)), *cert. denied sub nom., Meinster v. United States*, 457 U.S. 1136, 102 S.Ct. 2965, 73 L.Ed.2d 1354 (1982). Yet, our cases have still not resolved what RICO conspirators must individually agree to.

Today we join the majority view among the circuits in holding that to be guilty of RICO conspiracy, the conspirator must simply agree "to the objective of a violation of RICO; he need not agree personally to violate the statute." *Neapolitan*, 791 F.2d at 498. Our decision is mandated not only by the plain language of the RICO statute, but also by the nature and purpose of the statute.

Section 1962(d) specifically prohibits a conspiracy to violate any of the substantive RICO provisions. 18 U.S.C. § 1962(d). Nothing in this language indicates that Congress intended to do anything more than to criminalize a conspiratorial objective – the violation of a substantive RICO provision. *Sutherland*, 656 F.2d at 1193; *Elliott*, 571 F.2d at 903; *Neapolitan*, 791 F.2d at 497. If we were to hold

that in addition to agreeing to the overall criminal objective, a RICO conspirator had to agree to perform the actual crime, two predicate acts comprising a substantive violation of RICO, this holding would be a marked departure from traditional conspiracy law for which there is no support in the language of the statute or the statutory history. *Neapolitan*, 791 F.2d at 497-98 ("Requiring an agreement personally to commit two predicate acts would establish a new form of conspiring in contradistinction to section 1962(d)'s base in traditional conspiracy law.").

The Congressional purpose in enacting RICO was to provide a new remedy to punish organized crime. *Id.* at 495 & 498; *see United States v. Barton*, 647 F.2d 224, 237-38 (2d Cir.1981) ("It is the purpose of this Act to seek the eradication of organized crime in the United States . . . by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crimes.") (quoting The Statement of Findings of the Organized Crime Control Act of 1970, 84 Stat. 923), *cert. denied*, 454 U.S. 857, 102 S.Ct. 307, 70 L.Ed.2d 152 (1981). To be guilty of a RICO violation, one must have violated other laws in a way that implicates RICO. *Neapolitan*, 791 F.2d at 497 ("The statute does not create a new type of crime; it establishes prerequisites for the imposition of harsher penalties."). Therefore to be an effective tool against organized crime, a RICO conspiracy should not require anything more than is required to conspire to violate any other federal crime. *Id.* This conclusion is bolstered by the

expansive reading that the Supreme Court has given the statute.[19]

Having concluded that a RICO conspirator need not agree to personally perform the two predicate acts which compose the substantive violation of RICO, we find that the court's instructions were an accurate statement of the law.[20]

V

Section 1963(a) provides that anyone who violates RICO must forfeit any interest that they have acquired or maintained in violation of the statute, any enterprise that they have established or conducted in violation of RICO, and any property constituting or derived from proceeds obtained from racketeering activity in violation of RICO.

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[19] *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498, 105 S.Ct. 3275, 3286, 87 L.Ed.2d 346 (1985).

[20] Salinas also argues that there was insufficient evidence to support his conviction for RICO conspiracy. In reviewing a sufficiency of the evidence challenge, we view "the evidence in the light most favorable to the jury verdict and affirm[ ] if a rational trier of fact could have found that the government proved all essential elements of the crime beyond a reasonable doubt." *United States v. Puig-Infante*, 19 F.3d 929, 937 (5th Cir.), *cert. denied*, ___ U.S. ___, 115 S.Ct. 180, 130 L.Ed.2d 115 (1994). To prove a RICO conspiracy charge, the government must prove "that the defendant conspired to engage in a pattern of racketeering activity." *United States v. Marcello*, 876 F.2d 1147, 1152-53 (5th Cir.1989). To establish a pattern of racketeering activity, the government must prove "two predicate acts, each of which must be a criminal offense." *Id.* Having carefully reviewed the record, we conclude that there was sufficient evidence to convict Salinas of RICO conspiracy.

18 U.S.C. § 1963(a). Section 1963(m) provides that if by some "act or omission of the defendant" the government cannot locate the property it is authorized to forfeit by subsection (a), "the court shall order the forfeiture of any other property of the defendant up to the value of any property" that the defendant has made untraceable. 18 U.S.C. § 1963(m). The government sought the forfeiture of $151,000 in bribe proceeds from Marmolejo pursuant to 18 U.S.C. § 1963(a). Marmolejo argues that the court erred in authorizing the forfeiture of substitute assets without requiring the government to prove that he made unavailable the assets that he obtained from his violations of RICO. We review the district court's findings of fact under the clearly erroneous standard of review, and the question of whether those facts constitute legally proper forfeiture *de novo*. *United States v. 1977 Porsche Carrera*, 946 F.2d 30, 33 (5th Cir.1991).

One of the specific ways that § 1963(m) provides that the government can forfeit substitute property is if some of the property, "as a result of any act or omission of the defendant has been transferred or sold to, or deposited with, a third party." 18 U.S.C. § 1963(m)(2). At the forfeiture hearing, both Marmolejo and the government stipulated that if a government agent were called to testify he would testify that he could not locate the specific property the government sought to forfeit because "some of the property had been transferred, sold or deposited with third parties." Marmolejo's attorney specifically acknowledged that the government could not trace any of Marmolejo's assets. Furthermore, Marmolejo did not oppose the district court's Order of Forfeiture which specifically

stated that the parties stipulated that forfeiture of substitute assets was appropriate. Therefore, given that both parties stipulated that substitution of assets was appropriate, and because the court's decision was based on a legally proper ground, § 1963(m)(2), we hold that the forfeiture was proper.

VI

Defendants argue that the district court erred in denying their motions to suppress evidence seized pursuant to a search warrant that they allege was invalid.[21] In reviewing a district court's denial of a motion to suppress evidence obtained pursuant to a search warrant we must decide: "(1) whether the good-faith exception to the exclusionary rule applies; and (2) whether probable cause supported the warrant." *United States v. Satterwhite*, 980

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[21] Before trial, Marmolejo moved to suppress evidence obtained pursuant to three search warrants. Based on the affidavit of John Trevino, Special Agent of the Internal Revenue Service, Criminal Division, the government obtained three warrants to search Marmolejo's residence, ranch, and office. The warrant sought nine categories of items ranging from personal address and telephone books that would contain the addresses or telephone numbers of Marmolejo's associates to documents reflecting receipts or disbursements of money from Beltran to Marmolejo.

Salinas also sought to suppress evidence found pursuant to a search warrant that was also obtained based on Special Agent Trevino's affidavit. The warrant for Salinas' residence sought six categories of items ranging from personal address and telephone books that might contain Salinas' associates to a set of his and hers Rado watches given by Beltran to Salinas and his wife.

F.2d 317, 320 (5th Cir.1992) (footnote omitted). However, because this case does not involve novel issues of law that need to be resolved to assist law enforcement officers and magistrate judges in the future, we need not decide whether the warrant was supported by probable cause if we find that the good-faith exception to the exclusionary rule applies. *Id.*; *United States v. Restrepo*, 994 F.2d 173, 187 (5th Cir.1993).

"When a warrant is supported by more than a 'bare bones' affidavit, officers may rely in good faith on the warrant's validity" in conducting a search. *Satterwhite*, 980 F.2d at 321. However, an affidavit that contains only conclusions and "lack[s] the facts and circumstances from which a magistrate can independently determine probable cause" is considered "bare bones" and cannot be the basis of an objectively reasonable good-faith reliance by an officer. *Id.* We review *de novo* whether the good-faith exception to the exclusionary rule applies. *Id.* at 321.

We conclude that the affidavit which supported the search warrants for Marmolejo's residence, ranch, and office and Salinas' residence contained sufficient facts from which the magistrate could determine probable cause. The affidavit contains detailed first-hand observations by the affiant, as well as detailed information provided by informants whom the affiant establishes as reliable.[22] It describes the bribery scheme between

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[22] For example, the affidavit states that confidential source number one ("CS-1"):

> has provided information about Homero BELTRAN receiving special privileges and visits at the Hidalgo County Jail, as corroborated by CS-2, CS-3 and by

Beltran and Marmolejo in detail and Salinas' role in aiding and abetting it.[23] Many of the facts are corroborated

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testimony of a witness before the Federal Grand Jury in McAllen, Texas. CS-1 has also provided information that Homero BELTRAN gave a 1989 Pontiac Trans-Am to Brigido MARMOLEJO JR., which has been independently corroborated by a record check with the Texas Department of Motor Vehicles and by statements made to law enforcement officers participating in this investigation by the current owner of the vehicle that Brigido MARMOLEJO JR., was the former owner of the vehicle.

Another example of the reliability of the confidential sources demonstrated in the affidavit is:

> CS-3 has provided information to your affiant and other law enforcement officers for the past three months as to the ownership of real estate by a convicted drug trafficker, Homero BELTRAN, and that Brigido MARMOLEJO JR. was involved in the proposed sale of the property, which has been corroborated by CS-1, CS-2, and independent investigation by your affiant and special agents assigned to the DEA OCDETF group in McAllen, Texas.

[23] The affidavit explains that by September 1991, Beltran was receiving special privileges inside the jail because of an agreement that he had with a jail employee named Zavala. It recounts how Marmolejo then met with Beltran and agreed to increase the frequency and duration of Beltran's visits with his family. Initially, Beltran was to pay Marmolejo $5,000 per month for having at least one visit a week with his family. The affidavit describes how the agreement was renegotiated to allow for three visits per week for $5,000 per week and $1,000 per visit. The affidavit states that "CS-1 and CS-2 observed on several

by the observations of others and by taped conversations with Marmolejo which the affiant helped record.

Based on these facts, the magistrate could independently determine probable cause; therefore, the affidavit was more than "bare bones" which the officers could rely on in good faith. Since the officers acted in good faith in relying on the search warrants, we need not determine whether the warrants were supported by probable cause. We conclude that the defendants' motions to suppress were properly denied.[24]

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occasions Mario Salinas guarding the door to Brigido Marmolejo's office."

The affidavit describes the watches that Beltran bought for Marmolejo and Salinas and their wives. It also explains that Beltran gave Marmolejo $11,000 to complete a pavilion that Marmolejo was building at his ranch for his daughter's wedding. The affidavit further states that, "CS-2 was present when Brigido MARMOLEJO JR. had taken Mario SALINAS to his ranch and showed him the pavilion. Brigido MARMOLEJO JR. stated that 'if it was not for Homero BELTRAN, I wouldn't have the pavilion.' "

The affidavit also details the many financial transactions that Marmolejo entered into with Beltran.

[24] Salinas also argues that the search exceeded the scope of the search warrant because officers searched his car which was not authorized in the search warrants. As result, Salinas argues, all evidence obtained in the search should be suppressed. However, Salinas does not state what evidence from the vehicles, was discovered and admitted at trial. The only items of evidence the government admitted at trial that was seized pursuant to the search warrants were two Rado watches seized from Salinas' residence and a telephone number list seized from Salinas' office. Under the severability doctrine, evidence that is illegally seized has no effect on the admissibility of legally seized evidence. *United States v. Willey*, 57 F.3d 1374, 1390 (5th

VII

Salinas argues that his criminal prosecution was prohibited by the Double Jeopardy Clause. He contends that prior to his criminal trial, the government forfeited his property, two Rado watches, which constituted punishment for his crime, thereby precluding any subsequent punishment. The district court rejected Salinas' claim, finding that the government had suspended forfeiture proceedings and only intended to keep the watches as evidence for trial. We review the denial of a motion to dismiss on Double Jeopardy grounds *de novo*. *United States v. Arreola-Ramos*, 60 F.3d 188, 191 (5th Cir.1995).

Salinas' property was seized by the DEA for forfeiture under 21 U.S.C. § 881 as property used or acquired as the result of a drug-related offense.[25] The DEA sent Salinas a Notice of Seizure in November 1993. The Notice informed Salinas that he could either request remission or mitigation of the forfeiture within thirty days of his receipt of the notice, or contest the forfeiture within twenty days of the first date of publication of the notice – November 17, 1993. On December 30, 1993, Salinas sent a Petition for Remission, or in the Alternative for Mitigation of the Forfeiture which was then denied by the DEA.

Cir.), *cert. denied*, ___ U.S. ___, 116 S.Ct. 675, 133 L.Ed.2d 524 (1995); *United States v. Hamilton*, 931 F.2d 1046, 1054 (5th Cir.1991). Therefore, without any allegation of illegally seized evidence, Salinas' claim is without merit.

[25] The government's theory was that the watches had been purchased by Beltran with drug proceeds. Beltran was a well-known drug dealer who had made $4 to $5 million in profits from marijuana smuggling.

The DEA, however, never issued a Declaration of Forfeiture administratively forfeiting the watches.

Salinas argues that the watches were effectively forfeited when he failed to file a claim and post a bond contesting the forfeiture before the time for contesting expired on December 7, 1993. Salinas argues that this automatic forfeiture occurred because of 21 C.F.R. § 1316.77(a). Section 1316.77(a) provides

> For property seized by officers of the Drug Enforcement Administration, if . . . a claim and bond are not filed within the 20 days hereinbefore mentioned, the DEA Special Agent-in-Charge or DEA Asset Forfeiture Section shall declare the property forfeited. The DEA Special Agent-in-Charge or DEA Asset Forfeiture Section shall prepare the Declaration of Forfeiture and fovard [sic] it to the Administrator of the Administration as notification of the action he has taken.

21 C.F.R. § 1316.77(a). If Salinas were correct in arguing that automatic forfeiture occurs once the twenty days expire, then there would be no need for the statute to require that either the DEA Special Agent-in-Charge or DEA Asset Forfeiture Section "declare the property forfeited" and then prepare a "Declaration of Forfeiture." The statute would simply provide that the property is automatically forfeited once the twenty days had expired. We find that instead of authorizing automatic forfeiture, the statute authorizes the DEA to *declare* property forfeited when no person files a claim within the required period. *See United States v. Baird*, 63 F.3d 1213, 1217 (3d Cir.1995) ("Where no person files a claim to the seized property within the statutory

period, the agency is *authorized* to declare the property forfeited.") (citing 19 U.S.C. § 1609(b) and 21 C.F.R. § 1316.77) (emphasis added), *cert. denied*, ___ U.S. ___, 116 S.Ct. 909, 133 L.Ed.2d 841 (1996); *cf. Arreola-Ramos*, 60 F.3d at 190 (stating that once the time for making a claim and posting a bond has expired, the seizing agency automatically issues a declaration of forfeiture). However, if the agency does not issue a "Declaration of Forfeiture," the property is not forfeited. *Cf. Arreola-Ramos*, 60 F.3d at 190 (stating that the *declaration of forfeiture* by a seizing agency has "the same effect as a final decree and order of forfeiture entered in a judicial proceeding").

The Ninth Circuit, in a case that is factually similar to this one, recently rejected the exact argument that Salinas makes. *See United States v. Sanchez-Cobarruvias*, 65 F.3d 781 (9th Cir.), *cert. denied*, ___ U.S. ___, 116 S.Ct. 797, 133 L.Ed.2d 745 (1996). In *Sanchez-Cobarruvias*, United States Border Patrol Agents seized several guns from the defendant's car at which time the defendant filled out a Petition for Remission or Mitigation of Forfeiture form. The defendant was thereafter indicted for firearms violations. Customs officials then initiated civil administrative forfeiture proceedings against the defendant's car and sent him a Notice of Seizure explaining how the defendant could contest the forfeiture. After the twenty day claims period expired, the defendant moved to dismiss his criminal charges on double jeopardy grounds. The district court denied the motion, holding that no final disposition had taken place in the forfeiture proceedings; therefore, the property had not been forfeited, and jeopardy could not have attached. *Id.* at 782. The

Ninth Circuit affirmed the district court's denial of the defendant's motion to dismiss on double jeopardy grounds based on its interpretation 19 U.S.C. § 1609(a), which contains similar procedures as 21 C.F.R. § 1316.77.[26] The court stated,

> The fact that section 1609(a) uses mandatory rather than hortatory language means only that the government will declare seized property forfeited and proceed to auction it off, if there has been no challenge to the forfeiture proceedings; it does not mean that forfeiture is complete as a matter of law simply because the twenty days have passed. Put another way, a Declaration of Forfeiture or final Disposition Order is not an empty gesture; it is the means whereby the government legally obtains title to seized property in order to dispose of it.

Id. at 783-84. Because there had been neither a Declaration of Forfeiture nor a final Disposition Order, the Ninth Circuit held that there had been no finality to the forfeiture proceeding. *Id.* at 784. Therefore the defendant's property had not been forfeited, and there was no double jeopardy bar to his criminal prosecution.

The DEA has never issued a Declaration of Forfeiture for Salinas' watches. Consequently, we hold that there has been no finality to the forfeiture proceedings and therefore no forfeiture. As a result, jeopardy has not attached in the first proceeding to erect any potential bar to Salinas' subsequent criminal prosecution.

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[26] *See* 19 U.S.C. §§ 1608 and 1609(a) and (b).

VIII

The district court enhanced Marmolejo's sentence for obstruction of justice based on its belief that Marmolejo perjured himself at trial. Marmolejo argues that this was error because the court failed to give him adequate notice of its intent to enhance his sentence on this ground.

Parties must be given notice and an opportunity to comment on matters relating to sentencing. FED.R.CRIM.P. 32(a)(1); *Burns v. United States*, 501 U.S. 129, 137 & 138, 111 S.Ct. 2182, 2187, 115 L.Ed.2d 123 (1991). However, the Fifth Circuit has recently held that "if the defendant has actual knowledge of the facts on which the district court bases an enhancement or a denial of a reduction, the Sentencing Guidelines themselves provide notice of the grounds relevant to the proceeding sufficient to satisfy the requirements of Rule 32 and U.S.S.G. § 6A1.3." *United States v. Knight*, 76 F.3d 86, 88 (5th Cir.1996). Because Marmolejo had actual knowledge of the facts upon which the district court based its enhancement – his testimony at trial – Marmolejo had adequate notice of the court's intent to enhance his sentence for obstruction of justice.[27]

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[27] Marmolejo argues several other points of error, none of which have merit. First, Marmolejo argues that there was insufficient evidence to convict him of money laundering. Viewing the evidence in the light most favorable to the jury verdict, *see Puig-Infante*, 19 F.3d at 937, we find that a rational trier of fact could have found that the government proved beyond a reasonable doubt that Marmolejo was guilty of money laundering.

Marmolejo also contends that the district court erred by admitting hearsay evidence and disallowing other "critical impeachment evidence." We find that the district court did not abuse its discretion. *See United States v. Coleman*, 997 F.2d 1101, 1105 (5th Cir.1993) ("Rulings limiting the scope or extent of cross-examination are committed to the sound discretion of the trial court and are reviewed only for abuse of discretion."), *cert. denied*, ___ U.S. ___, 114 S.Ct. 893, 127 L.Ed.2d 86 (1994); *United States v. Vela*, 673 F.2d 86, 90 (5th Cir.1982) (stating that we review a trial court's decision to admit business records for abuse of discretion).

IX

For the foregoing reasons, we AFFIRM Marmolejo's sentence and both defendants' convictions.

E. GRADY JOLLY, Circuit Judge, concurring in part and dissenting in part:

I respectfully dissent from Part II B of the majority's opinion. The majority holds that it is a federal crime for local jail officials to accept bribes for conjugal visits because conjugal visits constitute "business" or "transactions" of the Hidalgo County Jail. It reaches this conclusion even though the conduct in question did not affect federal funds directly or indirectly, the only congressional objective of this criminal statute. Moreover, the majority holds that these conjugal visits have a value of at least $5,000 based solely on the amount of the bribes received by the local jail officials. The majority thus enlarges the scope of this statute by effectively holding that the statute is violated whenever a bribe satisfies the transactional amount prescribed by the statute even when the transaction has no value to the jail and thus could have no effect on federal interests. With due respect for the majority, I

am unable to agree with this virtually unlimited expansion of 18 U.S.C. § 666(a)(1)(B).

(1)

As noted in the majority opinion, the statute requires that the government prove that the defendants were agents of the Hidalgo County Jail, and that the jail received, in any one-year period encompassing the defendants' conduct, more than $10,000 in "benefits" from a "Federal program" involving a grant or contract. 18 U.S.C. § 666(a)(1), (b) (1994). The government further must prove that the defendants, as agents of the jail, accepted "anything of value" from someone, and did so with the intent to be influenced or rewarded in connection with "any business, transaction, or series of transactions" of the jail "involving anything of value of $5,000 or more." § 666(a)(1)(B).

The majority concludes that the statute clearly encompasses the conduct of the defendants. I conclude that the statute clearly does not reach the conduct at issue. These two contrary positions, each supported by its own rationale, would lead one to conclude that the statute is ambiguous.

The majority parses the language of the statute to find clarity where, when fully considered, there is only ambiguity. Isolating words from the context of the statute, it focuses on "anything of value" instead of considering the whole of the phrase "any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more" so as to conclude that the statute is plain and clear that

valuations can be from the perspective of any of the parties involved. The Second Circuit persuasively demonstrated the ambiguity involved in this point when it recently rejected the "clarity" proclaimed by the majority here, by stating: "Sec. 666(a)(1)(B) is silent as to the identity of the person or entity to whom the '[ ]thing' must have at least a $5,000 value." *United States v. Foley*, 73 F.3d 484, 490 (2d Cir.1996).[28]

In its effort to fulfill the elemental requirements of the statute, specifically that the "transactions" had a "value of $5,000," the majority confuses and then fuses the value of the transactions with the amount of the bribe. Yet, the two are completely distinct under the statute. The text of the statute makes clear that the acceptance of "anything of value," i.e., the acceptance of the bribe, is a separate element of the crime from the amount of the transaction; consequently, the amount of the bribe has no statutory relevance to the value of the transaction. Stated differently, the value of the transaction cannot automatically be extrapolated from the amount of the bribe, but instead must be established on grounds independent, at least in some way, of the bribe. Our decision in *United States v. Westmoreland*, 841 F.2d 572 (5th Cir.), *cert. denied*, 488 U.S. 820, 109 S.Ct. 62, 102 L.Ed.2d 39 (1988), illustrates the illogic of the majority's analysis in using the bribe to satisfy both the "anything of value"

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[28] The majority cites *Westmoreland* to support its claim that the statutory language is unambiguous. Slip. Op., at 4709 n. 7. The fact that we found the statutory language "plain and unambiguous" on one issue, namely, whether § 666(a)(1)(B) imposes a tracing requirement, does not mean that it is "plain and unambiguous" on all issues.

element of the crime and the "value of the transaction" element. There, a county supervisor accepted bribes totaling $2,202 in connection with the purchase of $14,482.92 worth of goods for the county. *Id.* at 575. The purchases made by the county supervisor constituted the series of transactions of the county "involving anything of value of $5,000 or more"; the bribes satisfied the "anything of value" element of the crime. In short, as applied in this case, the language of § 666(a)(1)(B) is at best ambiguous insofar as it concerns the method of valuing a transaction.

(2)

Given this ambiguity, it is necessary to turn to the legislative history for guidance in interpreting and applying the statute. *Hightower v. Texas Hospital Association*, 65 F.3d 443, 448 (1995). Faced with legislative history that does not support its reading of the statute, however, the majority evades grappling directly with the legislative history.[29] Instead, the majority falls back on generalized descriptions of that legislative history from our decision in *Westmoreland*. The majority states that its broad reading

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[29] The majority does quote a passage from the legislative history that directly contradicts its interpretation of § 666 without attempting to explain this contradiction:

> [18 U.S.C. § 666 was] designed to create new offenses to augment the ability of the United States to vindicate significant acts of theft, fraud, and *bribery involving Federal monies* that are disbursed to private organizations or State and local governments pursuant to a Federal program.

Slip. Op., at 4709 (quoting S.Rep. No. 225, 98th Cong., 2d Sess., *reprinted in* 1984 U.S.C.C.A.N. 3182, 3510) (emphasis added).

of the language of the statute "squares with Congress's intent in enacting 18 U.S.C. § 666 to safeguard 'the integrity of federal funds by assuring the integrity of the organizations or agencies that receive them.' " Maj.Op., at ___ (quoting 841 F.2d at 578). The majority also states that "Congress 'cast a broad net to encompass local officials who may administer federal funds, regardless of whether they actually do.' " *Id.* at 4709 (quoting 841 F.2d at 577). Unfortunately, the majority quotes from *Westmoreland* without reviewing the context of the legislative history in which those descriptions arose. Such a review demonstrates the majority's inappropriate use of these descriptions to support its overly-broad reading of the reach of the statute.

In *Westmoreland*, a county supervisor was convicted of receiving kickbacks for purchases of county materials that involved only non-federal funds of the county. 841 F.2d at 573. The defendant argued that "the statute requires the involvement of federal, not merely state, funds in the allegedly corrupt transactions." 841 F.2d at 575. After reviewing the statutory language and the legislative history, we said:

> *[W]hile the legislative history manifests a congressional intent to preserve the integrity of federal funds,* Congress specifically chose to do so by enacting a criminal statute that would eliminate the need to trace the flow of federal monies and that would avoid inconsistencies caused by the different ways that various federal programs disburse funds and control their administration." *Id.* (emphasis added).

The court in *Westmoreland* thus recognized that the legislative history exhibited a clear intent to protect federal funds distributed to non-federal entities. Recognizing the difficulty involved in tracing federal funds, *Westmoreland* remained faithful to this congressional objective by holding that § 666 encompassed transactions involving non-federal funds of an entity receiving federal funds. *Westmoreland* did not hold that Congress meant to criminalize any act of bribery involving non-federal entities receiving federal funds, *but only those acts of bribery that could somehow be traced, directly or indirectly, to the integrity of federal program funds.* The majority's use of *Westmoreland's* generalized descriptions of the legislative history to support its overly-broad reading of the statute thus does not square with *Westmoreland's* own recognition of congressional purpose or the reasoning behind its holding.

Turning to the precise legislative history, I find that it clearly reveals that Congress did not intend for § 666(a)(1)(B) to be applied to conduct such as the acceptance of bribes to allow conjugal visits. Instead, Congress was only concerned with protecting the federal monies disbursed to non-federal entities. "This part of title XI is designed to create new offenses to augment the ability of the United States to vindicate significant acts of theft, fraud, and bribery *involving Federal monies* that are disbursed to private organizations or State and local governments pursuant to a Federal program." 1984 U.S.C.C.A.N. at 3510 (emphasis added). Congress also stated that "the purpose of this section [is] to *protect the integrity of the vast sums of money* distributed through Federal programs

from theft, fraud, and undue influence by bribery." *Id.* at 3511.

The majority's attempt to find support in the circuit court cases cited in the legislative history, *see* Slip Op., at 4710 n. 9; 1984 U.S.C.C.A.N. at 3511 & nn. 2-3, will not withstand a careful look. None of the cases from the legislative history cited by the majority supports the majority's reading of § 666(a)(1)(B) because the conduct at issue in those cases directly implicated federal monies. *United States v. Hinton*, 683 F.2d 195 (7th Cir.1982) (soliciting money in exchange for award of housing rehabilitation contracts funded by HUD), *aff'd sub nom., Dixson v. United States*, 465 U.S. 482, 104 S.Ct. 1172, 79 L.Ed.2d 458 (1984); *United States v. Mosley*, 659 F.2d 812 (7th Cir.1981) (receiving money in exchange for giving preferential treatment to individuals seeking jobs funded by Comprehensive Employment and Training Programs Act); *United States v. Del Toro*, 513 F.2d 656 (2d Cir.) (bribing city administrator to insure that program receiving funding from HUD would lease building), *cert. denied*, 423 U.S. 826, 96 S.Ct. 41, 46 L.Ed.2d 42 (1975). In this case, allowing conjugal visits to a federal prisoner, in no way that my eyes can see, implicates federal monies.

Furthermore, I have found nothing in the legislative history to indicate that Congress meant to reach acts of bribery – as the majority does – involving any and all official acts of agents of non-federal entities in the same way that 18 U.S.C. § 201 reaches acts of bribery involving

all official acts of federal agents.[30] Instead, Congress was focused on providing criminal sanctions precisely and only for abuse of, or threat to, federal monies that are disbursed to these non-federal entities. *Westmoreland* logically extends the reach of the statute – based on a recognition of the fungibility of money – to non-federal funds of that entity.

(3)

The majority's decision today also creates a split with the well-reasoned and more carefully crafted decision of the Second Circuit in *United States v. Foley*.[31] In *Foley*, a Connecticut legislator was convicted of receiving a bribe to help secure the passage of legislation that would have given a recently-merged bank a one-year exemption from a divestiture requirement. 73 F.3d at 486-87. Although the defendant received a $25,000 bribe and the exemption was worth more than $5,000 to the bank, the Second Circuit held that the transaction did not meet the "$5,000

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[30] Section 201 reads in part: "Whoever, being a public official . . . accepts . . . anything of value . . . for being influenced in the performance of any official act . . . shall be . . . imprisoned. . . . " 18 U.S.C. § 201(b) (1994). Congress was well aware of this provision when it passed § 666 because a circuit split concerning § 201's application to non-federal entities motivated congressional action on § 666. *See* 1984 U.S.C.C.A.N. at 3510-11.

[31] Surprisingly, the majority supports its holding by citation to *United States v. Mongelli*, 794 F.Supp. 529, 531 (S.D.N.Y.1992), Slip Op., at 4711, 4712, a decision *overruled* by the Second Circuit in *Foley*. *See* 73 F.3d at 496 (Lumbard, J., dissenting).

or more" requirement of § 666(a)(1)(B) because the government had not shown that the exemption was worth at least $5,000 to the State of Connecticut. "[T]he exemption affected neither the financial interests of the protected organization nor federal funds directly." *Id.* at 493. Based on a clear understanding of the congressional objective in enacting § 666, the Second Circuit determined that the proper method to value a transaction is from the perspective of the protected entity, not from the perspective of "any willing buyer," as the majority would have us accept. Slip Op., at 4711. The *Foley* court stated:

> [T]he value of a thing for purposes of § 666(a)(1)(B) is not to be assessed by reference to any and every perspective or measure of value, no matter how subjective or arbitrary. Instead, the assessment of the thing's value must be connected, even if only indirectly, to the integrity of federal program funds.

73 F.3d at 490.

In an effort to distinguish *Foley* from these facts and from Fifth Circuit law, the majority contends that the defendant in the Fifth Circuit's *Westmoreland* decision would not have been convicted under *Foley* because the transaction in that case did not involve federal funds. Slip Op., at 4711 n. 10. Based on two quoted passages from *Foley* mentioning federal funds, the majority strains to conclude that the *Foley* Court held that federal funds must be involved in the transaction and that, therefore, the decision conflicts with *Westmoreland*. *Id.* A casual reading of *Foley* will reveal the majority's erroneous interpretation of that decision. First, *Foley* cites with approval our decision in *Westmoreland*. 73 F.3d at 491. Second, the

Foley Court noted that the Second Circuit has already held that the government is not required to trace the corrupt transaction to federal program funds. *Id.* at 490-91 (citing *United States v. Coyne*, 4 F.3d 100, 108-10 (2d Cir.1993), *cert. denied*, ___ U.S. ___, 114 S.Ct. 929, 127 L.Ed.2d 221 (1994)).[32] Third, the *Foley* Court recognized that the corrupt transaction violated § 666(a)(1)(B) if it affected *either* "the financial interests of the protected organization" *or* "federal funds directly." *Id.* at 493. The majority's attempt to distinguish *Foley* is, I respectfully submit, superficial.

(4)

Finally, I would observe that when a criminal statute only ambiguously applies to the conduct in question, surely the rule of lenity counsels that we construe the statute in favor of the defendant. *Liparota v. United States*, 471 U.S. 419, 427, 105 S.Ct. 2084, 2089, 85 L.Ed.2d 434 (1985).

(5)

To summarize, in interpreting § 666(a)(1)(B), we first must look to the specific statutory language, and in the light of its ambiguity, the legislative history, to determine whether *this* provision intends to reach *this* conduct. *Dowling v. United States*, 473 U.S. 207, 213, 105 S.Ct. 3127, 3131, 87 L.Ed.2d 152 (1985) ("[W]hen assessing the reach

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[32] The *Coyne* court itself recognized that it "agree[s] with the other circuits who have considered the question," including *Westmoreland*. 4 F.3d at 110.

of a federal criminal statute, we must pay close heed to language, legislative history, and purpose in order strictly to determine the scope of the conduct the enactment forbids"). Neither the plain language nor the legislative history indicates that Congress wrote this provision to reach the acceptance of bribes for conjugal visits, conduct that left both federal and state fiscs untouched. Congress intended to reach only conduct involving – directly or indirectly – the fiscal integrity of non-federal entities receiving federal monies. Because the defendant's conduct in no discernable way implicated the fiscal integrity of the Hidalgo County Jail, and because the majority's reading of the statute contradicts the clear expression of congressional intent in the legislative history, I respectfully dissent.

APPENDIX 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60812

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BRIGIDO MARMOLEJO, JR; MARIO SALINAS

Defendants - Appellants

Appeal from the United States District Court
for the Southern District of Texas, Laredo

ON PETITIONS FOR REHEARING AND SUGGESTIONS FOR REHEARING EN BANC

(Opinion 7/17/96, 5 Cir., ___, ___ F.3d ___)

(Filed Aug. 15, 1996)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:

(✓) The Petitions for Rehearing are DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FRAP and Local Rule 35) the Suggestions for Rehearing En Banc are also DENIED.

( ) The Petitions for Rehearing are DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (FRA and Local Rule 35) the Suggestions for Rehearing En Banc are also DENIED.

( ) A member of the court in active service having requested a poll on the reconsiderations of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearings En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Emilio M. Garza
United States Circuit Judge

REHG-15

APPENDIX 3

ARTICLE [IV]

The right of the people to be secure in their persons, houses, papers,and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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18 U.S.C. § 666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists –

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof –

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that –

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess

of $10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section –

(1) the term "agent" means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term "local" means of or pertaining to a political subdivision within a State;

(4) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term "in any one-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include

time both before and after the commission of the offense.

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18 U.S.C. § 4002. Federal prisoners in State institutions; employment

For the purpose of providing suitable quarters for the safekeeping, care and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

Such Federal prisoner shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary and healthful quarters and subsistence for such persons.

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18 U.S.C. § 1961. Definitions

As used in this chapter –

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating too wire fraud), section 1344 (relating to financial institution fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia),

section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United

States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

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18 U.S.C. § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

A purchase of securities in the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

APPENDIX 4

United States Department of Justice — Intergovernment Service Agreement

United States Marshals Service — *Housing of Federal Prisoners*

1. AGREEMENT NUMBER
   J-D79-M-001

2. EFFECTIVE DATE
   9/1/84

3. REQUISITION/PURCHASER/REQUEST NO.
   0181-D79-84

4. CONTROL NO.

5. ISSUING OFFICE
   UNITED STATES MARSHALS SERVICE
   Operations Support Division
   Program Administration Branch
   1-TYSONS CORNER CENTER
   MCLEAN, VIRGINIA 22102

6. GOVERNMENT ENTITY FACILITY CODE(S) 6GV

   NAME AND ADDRESS (*Street, city, county, State and ZIP code*)

   [Hidalgo County Detention Center, P.O. Box 359 Edingburg, Texas 78539]

   Contact Person Juan Jose Munoz, Chief
   Area Code & Telephone No. (512) 383-8114 ext. 73

8. ITEM NO. (1)

9. SUPPLIES/SERVICES This Agreement is for the housing, safekeeping and subsistence of adult male and female federal prisoners in accordance with the contents set forth herein.

10. QUANTITY ESTIMATED USMS PRISONER DAYS/ YR. 36,500

11. UNIT PDs

12. UNIT PRICE FIXED RATE $25.09

13. AMOUNT ESTIMATED ANNUAL PAYMENT $915,785

ITEM NO. (2)

SUPPLIES/SERVICES This Agreement consists of the following:

(A) I-G-A Cover Page, Form #241
(B) Agreement Schedule, pages 2-5.

14. *AGENCY CERTIFYING*

To the best of my knowledge and belief, data submitted in support of this agreement is true and correct, the document has been duly authorized by the governing body of the Department or Agency and the Department or Agency will comply with ALL PROVISIONS SET FORTH HEREIN.

15. NAME AND TITLE OF PERSON(S) AUTHORIZED TO SIGN OFFER.

/s/ Brig Marmolejo _____ Date 9-13-84
(Signature)

/s/ Brig Marmolejo _____ Sheriff
Name *(Type or Print)* Title

_____ Date _____
(Signature)

_____ _____
Name *(Type or Print)* Title

16. TYPE OF USE

[ ] Hold Over
■ Regular Support
[ ] Seasonal Support
[ ] Other

17. PRISONER TYPE TO BE INCLUDED

UNSENTENCED	SENTENCED
■ Adult Male	■ Adult Male
■ Adult Female	■ Adult Female
[ ] Juvenile Male	[ ] Juvenile Male
[ ] Juvenile Female	[ ] Juvenile Female
■ Aliens	[ ] Work Release
	[ ] YCA Male
	[ ] YCA Female

18. LEVEL OF USE

[ ] Minimum
[ ] Medium
■ Major

19. *This Negotiated Agreement is Hereby Approved and Accepted for*

THE UNITED STATES OF AMERICA
BY DIRECTION OF THE DIRECTOR OF THE
UNITED STATES MARSHALS SERVICE

BY /s/ JB Enders
(SIGNATURE OF CONTRACTING OFFICER)

20. ANTICIPATED ANNUAL USAGE

	UNSENTENCED	SENTENCED	ALIENS	TOTAL
No. of Prisoners	100			100
Prisoner Days	36,500			36,500
Guard Hours				

21. NAME OF AUTHORIZING OFFICIAL
(Type or Print)

Joseph B. Enders

DATE SIGNED

August 30, 1984

UNITED STATES MARSHALS SERVICE
AGREEMENT SCHEDULE
(SUPPORT OF U.S. PRISONERS)

ARTICLE I – PURPOSE

The purpose of this Intergovernmental Service Agreement (IGA) is to establish a formal binding relationship between the U.S. Marshals Service and other federal user agencies (the government) and Hidalgo County, Texas (The County) for the detention of persons charged with or convicted of violations of federal law or held as material witnesses (federal prisoners) at the Hidalgo County Jail (the facility).

ARTICLE II – SUPPORT AND MEDICAL SERVICES

1. The County agrees to accept and provide for the secure custody, care and safekeeping of federal prisoners in accordance with state and local laws, standards, policies, procedures, or court orders applicable to the operations of the facility.

2. The County agrees to provide federal prisoners with the same level of medical care and services provided local prisoners including the transportation and security for

prisoners requiring removal from the facility for emergency medical services. All costs associated with hospital or health care services provided outside the facility will be paid directly by the government.

3. The County agrees to notify the U.S. Marshal as soon as possible of all emergency medical cases requiring removal of a prisoner from the facility and to obtain prior authorization for removal for all other medical services required.

ARTICLE III – RECEIVING AND DISCHARGE

1. The County agrees to accept as federal prisoners those persons committed by federal law enforcement officers for violations of federal laws only upon presentation by the officer of proper law enforcement credentials.

2. The County agrees to release federal prisoners only to law enforcement officers of agencies initially committing the prisoner (i.e. DEA, INS, etc.) or to a Deputy United States Marshal. Those prisoners who are remanded to custody by a U.S. Marshal may only be released to a U.S. Marshal or an agent specified by the U.S. Marshal of the Judicial District.

3. Federal prisoners may not be released from the facility or placed in the custody of state of local officials for any reason except for medical or emergency situations. Federal prisoners sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement of Detainers and then only with the concurrence of the District U.S. Marshal.

ARTICLE IV – PERIOD OF PERFORMANCE

This Agreement shall remain in effect for a period of Fifteen (15) years after completion of the Cooperative Agreement 4-79-84 and indefinitely thereafter until terminated in writing by either party. After the 15 year period provided for in CAP Agreement 4-79-84 is completed, if conditions of an unusual nature occur making it impractical or undesirable to continue to house prisoners, the County may suspend or restrict the use of the facility by any or all federal agencies by giving written notice to the U.S. Marshal and the affected user agency. Such notice will be provided 30 days in advance of the effective date of formal termination and at least two weeks in advance of a suspension or restriction of use unless an emergency situation requires the immediate relocation of prisoners.

ARTICLE V – ECONOMIC PRICE ADJUSTMENT

1. Payment rates shall be established on the basis of actual costs associated with the operation of the facility during a recent annual accounting period or upon an approved annual operating budget.

2. The rate may be renegotiated not more than once per year, after the Agreement has been effective for twelve months.

3. The County may initiate a request for a rate increase or decrease by notifying the U.S. Marshal in writing at least 60 days prior to the desired effective date of the adjustment. Each rate adjustment submitted must include a completed Basic Data Sheet and Certification Form available from the U.S. Marshal. The County agrees to

provide additional cost information to support a rate increase and to permit an audit of accounting records upon request of the Marshals Service.

4. Criteria used to evaluate the increase or decrease in the per-capita rate shall be those specified in the federal cost standards for contracts and grants with State and local governments issued by the Office of Management and Budget.

5. The effective date of the rate modification will be negotiated and specified on the IGA Modification form approved and signed by a Marshals Service Contracting Officer. The effective date will be established on the first day of a month for accounting purposes. Payments at the modified rate will be paid upon the return of the signed modification by the authorized local official to the U.S. Marshal.

6. Unless other justifiable reasons can be documented by the County, per diem rate increases shall not exceed the National Inflation rate as established by the U.S. Department of Commerce.

ARTICLE VI – FINANCIAL PROVISIONS

1. The billing addresses of the agencies using this facility are as follows:

United States Marshal
515 Rusk Avenue
Houston, Texas 77002
Phone: (713) 229-2800

Immigration & Naturalization Service
Asst. Regional Commissioner, PMP
311 North Stemmons Freeway
Dallas, Texas 75207
Phone: (214) 729-6089

Bureau of Prisons
Community Programs Manager
2320 La Branch Street
Houston, Texas 77004
Phone: (713) 750-1755

2. The government shall reimburse the County at the fixed rates identified on page one of the agreement. The rates cover one person per prisoner day. The government may not be billed for two days when a prisoner is admitted one evening and removed the following morning. The County may bill for the day of arrival but not for the day of departure.

3. The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 USC 1801) is applicable to payments under this agreement and requires the payment to the County of interest on overdue payments. Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and the Office of Management and Budget Circular A-25.

4. Payment under this agreement will be due on the thirtieth (30th) calendar day after receipt of a proper invoice, in the office designated to receive the invoice. The date of the check issued in payment shall be considered to be the date payment is made.

5. The original invoice shall be submitted to the government office that has been designated to receive invoices, as stated in paragraph 1. To constitute a proper invoice, the invoice must include the name, title, phone number and complete mailing address of the official of the designated payment office. In addition, it shall list each federal prisoner, the specific dates of confinement for each, the

total days to be reimbursed, the agreed upon rate per day and the total amount billed (total days multiplied by the rate per day).

ARTICLE VII – GOVERNMENT FURNISHED PROPERTY

1. It is the intention of the Marshals Service to furnish excess federal property to local governments for the specific purpose of improving jail conditions and services. Accountable excess property, such as furniture and equipment, remains titled to the Marshals Service and shall be returned to the custody of the Marshals Service upon termination of the agreement.

2. The County agrees to inventory, maintain, repair, assume liability for and manage all federally provided accountable property and to immediately report the loss or destruction of accountable property to the U.S. Marshal. Annual inventory reports will be provided by the County to the U.S. Marshal.

3. The suspension of use or restriction of bed space made available to the Marshals Service are agreed to be grounds for the recall and return of any or all government furnished property.

4. The dollar value of property provided each year will not exceed the annual dollar payment made by the Marshals Service for prisoner support.

ARTICLE VIII – MODIFICATIONS/DISPUTES

1. Either party may initiate a request for modification to this agreement in writing. All modifications negotiated

will be written and approved by the U.S. Marshals Service contracting officer and submitted to the County on form USM 241a for approval.

2. Disputes, questions or concerns pertaining to this agreement other than CAP space guarantees will be resolved between the U.S. Marshal and the appropriate County official. Unresolved issues are to be directed, in writing, to the Chief, Operations Support Division, U.S. Marshals Service Headquarters.

ARTICLE IX – INSPECTION AND TECHNICAL ASSISTANCE

1. The County agrees to allow periodic inspections of the facility by U.S. Marshals Service Inspectors. Findings of the inspection will be shared with the facility administrator in order to promote improvements to facility operations, conditions of confinement and levels of services.

2. The Marshals Service will endeavor to provide or acquire technical training and management assistance from other federal, state or local agencies or national organizations upon the request of the facility administrator.

ARTICLE X – SPECIAL PROVISIONS

Upon the execution of Cooperative Agreement Number 4-79-84 the County agrees to provide 20 detention spaces for Federal prisoners on a daily basis and upon the completion of the project, the County agrees to provide 100 spaces for federal user agencies each day for a period of 15 years.

APPENDIX 5

* * *

[p. 1138] HOUSE PRISONERS IN THE HIDALGO COUNTY JAIL?

A YES, SIR.

Q AND THE SAME THING BETWEEN SEPTEMBER 1ST, 1992 AND SEPTEMBER 1ST, 1993?

A YES, SIR.

MR. SUROVIC: YOUR HONOR, THE GOVERNMENT WOULD OFFER WHAT'S BEEN MARKED AS GOVERNMENT EXHIBITS NO. 95 AND 96 INTO EVIDENCE.

MR. CANALES: NO OBJECTION.

THE COURT: ALL RIGHT. THAT'S THE SAME ISSUE OF HOW MUCH . . . WHETHER THERE'S A CERTAIN AMOUNT OF MONEY PAID TO THE JAIL. WE'LL ADMIT THAT AND YOU CAN HAVE THAT.

ALL RIGHT. 95 AND 96 ARE IN.

MR. SUROVIC: WE HAVE NO FURTHER QUESTIONS OF THIS WITNESS, YOUR HONOR.

THE COURT: THANK YOU, MA'AM. YOU CAN GO HOME.

MR. ENRIQUEZ: YOUR HONOR, I DO HAVE QUESTIONS.

THE COURT: WELL, WAIT A MINUTE.

CROSS-EXAMINATION

BY MR. ENRIQUEZ:

Q MS. MOTES, WOULD YOU AGREE THAT THESE PAYMENTS THAT YOU'VE TESTIFIED ABOUT ARE CONTRACT PAYMENTS FOR SERVICES RENDERED?

A YES, SIR.

Q THEY'RE NOT GRANT MONEY OR FEDERAL ASSISTANCE OR [p. 1139] ANYTHING OF THAT NATURE?

A NO, SIR.

MR. ENRIQUEZ: NO FURTHER QUESTIONS.

THE COURT: ALL RIGHT.

(WITNESS EXCUSED FROM THE (COURTROOM

MR. SUROVIC: YOUR HONOR, AT THIS TIME, WE'LL CALL MR. MANUEL DE LEON.

(WITNESS PRESENT

THE COURT: COME ON UP HERE AND BE SWORN IN, PLEASE?

(WITNESS COMPLYING

THE COURT: JUST STAND RIGHT THERE. WOULD YOU RAISE YOUR RIGHT HAND?

(MANUEL DE LEON, JR., (GOVERNMENT WITNESS, SWORN

THE COURT: SIT DOWN AND BE COMFORTABLE AND . . . NOW THAT YOU'RE SITTING, PULL THAT, AS BEST YOU CAN . . .

(WITNESS COMPLYING

THE COURT: THERE YOU GO, AND THEN TALK DIRECTLY INTO THAT AND TALK TO THE JURORS OVER THERE. OKAY?

THE WITNESS: YES, SIR.

DIRECT EXAMINATION

BY MR. SUROVIC:

Q WOULD YOU STATE YOUR FULL NAME, PLEASE?

A MANUEL DE LEON, JR.

. . . .

APPENDIX 6

* * *

[p. 1769] FACT, THIS PATTERN GOING ON AT ALL. IF YOU'VE ALREADY DECIDED IN COUNT ONE THAT THERE IS NO SUCH PATTERN GOING ON, WELL, THAT'S THE END OF COUNT ONE, AND IT'S ALSO THE END OF COUNT TWO.

BUT IF YOU HAVE FOUND THAT THIS PATTERN IS GOING ON, YOU WOULD'VE ALREADY GONE THROUGH A WHOLE SERIES OF ACTS FOR MARMOLEJO AND YOU WOULD'VE ONLY GONE THROUGH TWO FOR MR. SALINAS. WHAT YOU'RE BEING ASKED TO DECIDE IN COUNT TWO IS . . . IF SALINAS WAS ONLY INVOLVED IN ONE OR TWO OR EVEN NONE, DID HE, NEVERTHELESS, KNOW ABOUT THIS PATTERN. DID HE KNOW THAT THIS WHOLE PATTERN OF ACTIVITY WAS GOING ON AND DID HE THEN KNOWINGLY AND WILLFULLY JOIN IN AND PARTICIPATE AND CONTRIBUTE IN SOME FASHION.

NOW, PARTICULARLY HERE, THE EVIDENCE IS . . . AND THIS IS EVIDENCE THAT YOU CAN TAKE OR LEAVE. I'M NOT ENDORSING IT. BUT THE EVIDENCE IS THAT ON SOME OCCASIONS . . . THAT WERE FRANKLY NOT SPECIFIED, AS TO WHICH ONES. BUT ACCORDING TO THE GOVERNMENT WITNESSES, THAT ON TWO OR THREE OCCASIONS, THAT SALINAS WOULD, IN EFFECT, TAKE OVER. THAT HE WOULD NOT RECEIVE THE MONEY, BUT THAT HE WOULD BE SORT OF THE DEPUTY, WHICH IS WHAT HE WAS, AND THAT THE INSTRUCTIONS

WERE, "IF I'M NOT IN AND YOU WANT THESE SERVICES, CALL DEPUTY SALINAS AND HE'LL TAKE CARE OF IT FOR YOU". SO THE GOVERNMENT POINTS TO THAT AS EVIDENCE THAT HE KNOWINGLY AND WILLFULLY PARTICIPATED IN THIS SCHEME EVEN THOUGH HE HIMSELF WAS NOT RECEIVING

* * *

APPENDIX 7

* * *

[p. 1590] SENSE I'M GETTING IS THAT THAT'S WHERE THE SPLIT OF THE CIRCUITS IS. I'M JUST SAYING TO YOU, COUNSEL, AND I'M NOT TRYING TO HURT YOUR CLIENT, BUT IT JUST SEEMS TO ME THAT I'M EITHER NOT GOING TO DO IT AT ALL OR . . . IT EITHER DOESN'T MAKE ANY SENSE TO ME AT ALL, HOW TO DO IT, AS I'VE SAID, OR IF WE'RE GOING TO DO IT AT ALL . . . SEE, IT WOULDN'T HURT MY FEELINGS IF THE GOVERNMENT JUST SAYS, LET'S JUST DROP COUNT TWO, BECAUSE, AS I SAY, I THINK IT'S TOTALLY REDUNDANT AS TO MARMOLEJO, TOTALLY REDUNDANT.

AND AS TO SALINAS, IT'S JUST REALLY KIND OF A DIFFERENT SHOT. IT MAKES A LITTLE MORE SENSE FOR SALINAS, BUT OTHER THAN THAT, WHAT I'M SAYING IS . . . THE ONLY WAY I CAN SUBMIT IT, THAT MAKES ANY SENSE, IS . . . AND I WOULDN'T DO THIS JUST TO MAKE IT UP, EXCEPT THAT IT DOES LOOK LIKE VIRTUALLY EVERY CIRCUIT, RECENTLY, THAT'S WRITTEN ON THIS SUBJECT, WRITES ON IT THE WAY I'M TALKING ABOUT IT. AND THERE'S THIS PROBLEM THAT THERE'S SOME OLD FIFTH CIRCUIT CASES THAT ARGUABLY MEAN SOMETHING ELSE.

NOW, THE ELEVENTH CIRCUIT, SUPPOSEDLY, HAS NOW SAID THAT THE FIFTH PROBABLY NEVER MEANT THAT AND WOULDN'T MEAN IT TODAY. THAT CASE YOU ALL GAVE ME A MONTH OR TWO AGO SAYS, "WELL, WE DON'T NEED TO REACH

THAT", BUT I'M JUST SAYING THAT EVEN IF I GET REVERSED ON IT, AT LEAST WE'LL GET THE LAW CLEARED UP. BUT IT JUST DOESN'T MAKE ANY SENSE . . . IT DOESN'T MAKE ANY SENSE TO SUBMIT IT THE OTHER WAY, BECAUSE IT

* * *

APPENDIX 8

* * *

[p. 1243] I'LL PAY YOU, AND SO HE ASKED HIM TEN TIMES TO DO IT.

MR. CANALES: IT'S A VENDOR SITUATION. IF I HAPPEN TO HAVE FOUR PEOPLE HERE AND I HAVE FOUR SEPARATE TRANSACTIONS, FOUR SEPARATE INDIVIDUALS, SURE, IT IS, BUT WHEN I HAVE ONE GUY COMING AND TELLING ME, LOOK, HERE'S THE DEAL. WE'RE GOING TO PAY YOU, YOU KNOW, TWO HUNDRED THOUSAND, BUT WE'RE GOING TO BREAK IT UP AND –

THE COURT: BUT THAT'S NOT EXACTLY THE DEAL. THE DEAL IS, I'D LIKE TO DO CERTAIN THING. I WANT SOMETHING FROM YOU, AND EVERY TIME I ASK YOU FOR THAT, I'LL PAY YOU FOR IT.

MR. CANALES: IT'S ONE AGREEMENT. IT'S ONE AGREEMENT.

THE COURT: OH, IT MAY BE ONE AGREEMENT, BUT THEN –

MR. CANALES: ONE SCHEME, ONE SCHEME. IT'S ONE SCHEME. IT'S NOT TWO SCHEMES, BUT ONE SCHEME.

THE COURT: OKAY. BUT I DON'T KNOW THAT . . . IF WE'RE TALKING ABOUT SCHEMES, AS MUCH AS WE'RE TALKING ABOUT ACTS, IT'S A WHOLE SERIES OF ACTS OF BRIBERY. I MEAN, GRANTED, IT'S ONE ARRANGEMENT, BUT –

MR. CANALES: SURE. THAT'S WHAT I'M SAYING. AND ONE ARRANGEMENT MEANS ONE ARRANGEMENT WITH . . . I'M GOING TO PAY YOU EVERY WEEK OR EVERY MONTH. IT'S ONE SCHEME. IT'S NOT ONE DEAL.

THE COURT: OKAY. BUT I THINK IT'S DIFFERENT THAN SAYING, YOU HAVE DONE THIS FAVOR FOR ME, ONE FAVOR. I NOW

* * *

APPENDIX 9

• • •

[p. 1273] ONE . . . FOR EXAMPLE, TAKE SALINAS. I MEAN, I'M COMFORTABLE THAT THERE'S EVIDENCE THAT ON SEVERAL OCCASIONS, HE WAS A STAND-IN AND SO FORTH, BUT ARE THOSE . . . WILL THAT KIND OF EVIDENCE DO OR DO WE HAVE TO . . . DO I HAVE TO TRY TO FIGURE OUT THAT YOU HAVE PROVED A PRECISE DAY WHEN HE HAS STOOD IN FOR HIM?

NOW, I KNOW YOU'VE GOT THE ALLEGATION OF THE PICKUP TRUCK AND THE WATCHES, WHICH ARE EASY, BUT ASIDE FROM THOSE, CAN I JUST TELL THE JURY, DO YOU FIND . . . I MEAN, IT WOULD BE ENOUGH IF YOU FOUND THAT ON TWO OR THREE OCCASIONS, HE WAS THE SUBSTITUTE, THE SURROGATE, FOR THE SHERIFF. IS THAT ENOUGH OR DO THEY HAVE TO PICK OUT WHICH ONE? AND THE SAME THING WITH MR. FLORES. I MEAN, ADMITTEDLY, HE BROUGHT THE FELLOW DOWN A COUPLE OF TIMES, AND I'M NOT SURE THAT'S ENOUGH, BUT EVEN IF IT IS, DO I HAVE TO BE SATISFIED THAT WE KNOW WHICH EXACT TIME HE DID THAT? TO TIE IT IN TO A PARTICULAR ACT, OR WHAT?

MR. SUROVIC: YOUR HONOR, MY UNDERSTANDING OF THE RACKETEERING CONSPIRACY CASE LAW IS THAT CASES HAVE BEEN OVERTURNED WHEN IT WAS UNCLEAR FROM THE RECORD WHICH PARTICULAR RACKETEERING ACTS, ESPECIALLY IF THEY WERE LESS THAN . . . YOU KNOW,

LESS THAN TWO RACKETEERING ACTS, WERE IDENTIFIED WITH EACH INDIVIDUAL. EACH INDIVIDUAL HAS TO BE IDENTIFIED WITH AT LEAST TWO SPECIFIC RACKETEERING ACTS.

THE COURT: SO WHAT DO WE DO WITH THAT THEN? I

• • •

APPENDIX 10

United States District Court

SOUTHERN DISTRICT OF TEXAS

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

THE RESIDENCE OF MARIO SALINAS LOCATED AT #74 SANTA FE, EDINBURG, HIDALGO COUNTY, TEXAS BEING DESCRIBED AS A ONE-STORY BROWN BRICK RESIDENCE. (SEE ATTACHMENT "A")

SEARCH WARRANT
CASE NUMBER:
M-93-998-MO-D

TO: S/A John Trevino and any Authorized Officer of the United States.

Affidavit(s) having been made before me by

S/A John Trevino who has reason to believe
Affiant

that _ on the person of or X on the premises known as (name, description and/or location)

(SAME AS ABOVE)

in the SOUTHERN District of TEXAS there is now concealed a certain person or property, namely (describe the person or property)

(SEE ATTACHMENT "B")

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person

or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before 8/24/93
Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime – 6:00 A.M. to 10:00 P.M.) (~~at any time in the day or night as I find reasonable cause has been established~~) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to Peter E. Ormsby as required by law.
U.S. Judge or Magistrate

8/17/93 6:07 PM
Date and Time Issued

at McAllen, Texas
City and State

Peter E. Ormsby,
U.S. Magistrate
Name and Title of Judicial Officer

/s/ Peter E. Ormsby
Signature of Judicial Officer

08/17/93 08/18/93 @9:35am Mario Salinas

INVENTORY MADE IN THE PRESENCE OF
Mario Salinas and S/A Bob Guerra

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT
- ONE BOX OF MISC. BILLS AND DOCUMENTS FROM BED ROOM #1

- ONE BLUE BOX CONTAINING MISC. INCOME TAX INFO. INCLUDING THE YRS. 1984, 1986, 1987, 1988, 1989, 1990, 1991, AND 1992
- ONE GOLD NECKLACE W/DIAMONDS AND A RUBY
- ONE PERSONALIZED ANALYSIS FROM MASSACHUSETTS LIFE
- TWO RADO WATCHES
- $500.00 (U.S. CURRENCY) FROM A BLACK BAG FOUND IN THE LINCOLN
- $426.00 (U.S. CURRENCY) FROM A BLUE SHIRT IN THE M.B. CLOSET
- MISC. BILLS, TELEPHONE RECORDS, RECEIPTS AND PAPERWORK SEIZED THROUGHOUT THE RESIDENCE
- ONE ROLEX (SILVER/GOLD) WATCH SEIZED FROM THE MASTER BEDROOM

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

/s/ illegible

Subscribed, sworn to, and returned before me this date.

/s/ Peter E. Ormsby — 8/20/93
U.S. Judge or Magistrate — Date

[Receipt For Cash Or Other Items Omitted In Printing]

United States District Court

SOUTHERN DISTRICT OF TEXAS

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

THE RESIDENCE OF MARIO SALINAS LOCATED AT #74 SANTA FE, EDINBURG, HIDALGO COUNTY, TEXAS BEING DESCRIBED AS A ONE-STORY BROWN BRICK RESIDENCE. (SEE ATTACHMENT "A")

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
CASE NUMBER: M-93-998-MO-D

I S/A John Trevino being duly sworn depose and say

I am a(n) Special Agent of the Internal Revenue Service – CID and have reason to believe that _ on the person of or X on the property or premises known as (name, description and/or location)

(SAME AS ABOVE)

in the Southern District of Texas

there is now concealed a certain person or property, namely (describe the person or property to be seized)

(SEE ATTACHMENT "B")

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Criminal Procedure)

Subject to seizure as evidence of the commission of a criminal violation concerning a violation of Title 18

United States Code, Section(s) 666,1956,1957,1962, AND 1963 The facts to support a finding of Probable Cause are as follows:

(SEE ATTACHED AFFIDAVIT BY S/A JOHN TREVINO)

Continued on the attached sheet and made a part thereof:

X Yes _ No

S/A John Trevino illegible
Signature of Affiant

Sworn to before me, and subscribed in my presence,

8/17/93 at McAllen, Texas
Date City and State

Peter E. Ormsby, /s/ Peter E. Ormsby
U.S. Magistrate Signature of
Name and Title of Judicial Officer
Judicial Officer

[Attachment A – Map Omitted In Printing]

ATTACHMENT " B "

1. All documents reflecting receipts/disbursement of money from or on behalf of Raul VALLADARES SR. to Mario SALINAS.

2. All documents relating to the acquisition and transfer of a 1984 Chevrolet Pick-up Truck by Mario SALINAS.

3. His and hers Black and gold " RADO " watch sets given by Homero BELTRAN to Mario SALINAS and his wife.

4. Personal address/telephone books, rolodexes or papers which reflect names, addresses and/or telephone numbers of associates for Mario SALINAS.

5. Proceeds and articles of personal property obtained from assisting in the laundering of illegal drug proceeds and providing special treatment for inmates at the Hidalgo County Jail, including U.S. currency, artwork, precious metals and stones, jewelry, loan documents, real estate documents, negotiable instruments and financial instruments including stocks and bonds which were obtained from assisting in the laundering of illegal drug proceeds and providing special treatment for inmates at the Hidalgo County Jail.

6. Articles of personal property evidencing the obtaining, secreting, transfer, expenditure, and/or concealment of money and assets derived from assisting in the laundering of illegal drug proceeds and providing special treatment for inmates at the Hidalgo County Jail for the last three years including books, receipts, bank statements and records, business records, financial statements, money drafts, investment brokerage statements and records, money order and cashier's checks receipts, passbooks, bank checks, safes and

records of safety deposit boxes, loan documents, real estate documents and storage lockers.

AFFIDAVIT

I, John A. Trevino, Special Agent of the Internal Revenue Service, Criminal Investigation Division, being duly sworn, deposes and says:

That I am a Special Agent of the Internal Revenue Service, Criminal Investigation Division, and have been a Special Agent for the past six years. In my capacity as a Special Agent, I Investigate criminal and civil violations of the Internal Revenue Code. I have received specialized training in the enforcement of laws concerning financial crimes as found in Title 18 and 26, United States Code. During these six years your affiant has been involved in numerous investigations of individuals who derive substantial income from unlawful activities, including the importation, manufacturing, cultivation, distribution and sale of illegal controlled substances. In addition, your affiant has extensive experience in the execution of financial search warrants, narcotic search warrants, debriefing of defendants, participant witnesses, informants, and other persons who have personal knowledge of the amassing, spending, converting, transporting, distributing, laundering, and concealing of unlawful activities.

Based on information I have received, I believe that there is probable cause to believe that within the premises of

the personal residence of Mario SALINAS being described as a one story brown brick residence, located at #74 Sante Fe, Edinburg, Hidalgo

County Texas. For photograph of location and driving instructions see Attachment "A",

those items described in Attachment "B" are concealed.

Listed in the Application and Affidavit for Search Warrant are those items which are set forth in Attachment "B", attached, which constitute evidence of violations of Title 18, United States Code, Sections 666, 1956, 1957, 1962, 1963. The source of your Affiant's information and the grounds for his belief are as follows:

Based on my training, experience, and participation in financial investigations (including this investigation) involving trafficking of large amounts of marijuana, cocaine and heroin, and tracing the proceeds gained by marijuana, cocaine, and heroin traffickers, and money launders I know:

Illegible and through experience I know that documents pertaining to these crimes are found in drug traffickers and money launders vehicles, houses, offices, and in other property owned or controlled by them. JT

a. marijuana, cocaine, and heroin traffickers, very often place assets in other names and in the names of corporate entities to avoid detection and seizure of those assets by law enforcement officers;

b. that even though these assets are in other person's names, the drug traffickers actually own and continue to use these assets and exercise dominion and control over them;

c. that large-scale drug traffickers maintain on hand large amounts of U.S. Currency in order to maintain and finance their on-going drug business;

d. that drug traffickers maintain books, records, receipts, notes, ledgers, airline tickets, money orders and other papers relating to the importation, transportation, ordering, sale, purchase and distribution of controlled substances; that the aforementioned books, records, receipts, notes, ledgers, etc., are maintained where the drug traffickers have ready access to them such as in residence and places of business;

e. that it is common for large scale drug traffickers to secret contraband, proceeds of drug sales, to include jewelry and records of drug transactions in secure locations for ready access and concealment from law enforcement authorities;

f. that persons involved in drug trafficking conceal in their residents and other secure locations, with ease of assess, caches of drugs, large amounts of currency, financial instruments, precious metals, jewelry, and other items of value and/or proceeds of drug transactions; and evidence of financial transactions relating to obtaining, transferring, secreting, or spending of large sums of money from engaging in drug trafficking activities;

g. that when drug traffickers amass large proceeds from the sale of drugs, they then attempt to legitimize these profits. That to accomplish these goals, drug traffickers utilize, including but not limited to, foreign and domestic banks and their attendant services, securities, cashier's checks, money drafts, letters of credit, shell corporations, business fronts and attorneys' services to acquire and conceal expensive assets purchased with proceeds from narcotics trafficking;

The following paragraphs are furnished to establish probable cause in support of a document search warrant.

I have personally participated in the investigation of HOMERO BELTRAN and BRIGIDO MARMOLEJO JR., the Sheriff for the County of Hidalgo, Texas, with other law enforcement officers and the investigation is being coordinated with investigations being conducted by various law enforcement agencies in Texas and in other states. Based on these investigations, my own experience in the investigation, investigative reports, seizures, debriefings and observations made by other participating agents and law enforcement officers, and from interviews with Confidential Sources (CS-1 & CS-2) conducted on July 7 & 8, 1993, I know that several employees of the Hidalgo County Jail, including the Sheriff, BRIGIDO MARMOLEJO JR., accepted bribes in exchange for special favors and privileges received by HOMERO BELTRAN, a former inmate at the jail. I also know from interviews with CS-3 that Bridigo MARMOLEJO JR. assisted Homero BELTRAN in the proposed sale of a property that Homero BELTRAN had hidden in a nominee name. CS-1 was a large scale drug trafficker who has been caught, pled guilty, admitted his guilt and is providing information to law enforcement. CS-2 has intimate knowledge of the facts surrounding the relationship between BELTRAN and MARMOLEJO.

Based on your affiant's knowledge of the investigation and years of experience, your affiant believes CS-1, CS-2 and CS-3 are both credible and reliable for the following reasons:

CS-1 has provided information of drug traffickers operating in the South Texas area to law enforcement agents and to your affiant for the past two years which has been verified by independent investigation. CS-1 has also provided information about Homero BELTRAN receiving special privileges and visits at the Hidalgo County Jail, as corroborated by CS-2, CS-3 and by testimony of a witness before the Federal Grand Jury in McAllen, Texas. CS-1 has also provided information that Homero BELTRAN gave a 1989 Pontiac Trans-Am to Brigido MARMOLEJO JR., which has been independently corroborated by a record check with the Texas Department of Motor Vehicles and by statements made to law enforcement officers participating in this investigation by the current owner of the vehicle that Brigido MARMOLEJO JR. was the former owner of the vehicle. CS-1 provided information as to the ownership of real estate by a convicted drug trafficker, Homero BELTRAN, and that Brigido MARMOLEJO JR. was involved in the proposed sale of that property, which has been corroborated by CS-3.

CS-2 has provided information about Homero BELTRAN receiving special privileges and visits at the Hidalgo County Jail as corroborated by CS-1, CS-3 and a testimony of a witness before the Federal Grand Jury in McAllen, Texas. CS-2 has also provided information that Homero BELTRAN gave Brigido MARMOLEJO JR. a 1989 Pontiac Trans-Am which was independently corroborated by a record check with the Texas Department of Motor Vehicles and by statements made to law enforcement officers participating in this investigation by the current owner of the vehicle that Brigido MARMOLEJC JR. was the former owner of the vehicle. CS-2 has also provided

information as to the ownership of real estate by a convicted drug trafficker, Homero BELTRAN, and that Brigido MARMOLEJO JR. was involved in the proposed sale of the property, which has been corroborated by CS-3. CS-2 has also provided information about drug traffickers operating in the South Texas area, specifically Michael HAMAKER, who was a fugitive in a Federal indictment originating from Houston, Texas, and who has recently been captured. CS-2's information has proven to be valuable in the identification of the Mexican source of supply of marijuana and other members of that organization.

CS-3 has provided information to your affiant and other law enforcement officers for the past three months as to the ownership of real estate by a convicted drug trafficker, Homero BELTRAN, and that Brigido MARMOLEJO JR. was involved in the proposed sale of the property, which has been corroborated by CS-1, CS-2 and independent investigation by your affiant and special agents assigned to the DEA OCDETF group in McAllen, Texas. CS-3 has also provided information about Homero BELTRAN receiving special privileges and visits at the Hidalgo County Jail, as corroborated by CS-1, CS-2 and by testimony of a witness before the Federal Grand Jury in McAllen, Texas.

BELTRAN is a convicted marijuana trafficker whose organization imported thousands of pounds of marijuana into the United States from 1984 through 1991 from Mexico. I desire to keep said confidential sources anonymous because the confidential sources have requested me to do so, because it is my experience that informants suffer physical, social and emotional retribution when their identities are revealed, because it is my experience that to

reveal the identity of such sources seriously impairs their utility to law enforcement, and because it is my experience that revealing such informants identities prevents other citizens from disclosing confidential information about criminal activities to law officers. The following paragraphs will chronicle the events pertaining to information gained by CS-1, CS-2, and CS-3 concerning BRIGIDO MARMOLEJO JR., specifically with his relationship with HOMERO BELTRAN.

After Homero BELTRAN's arrest in April 1991, Homero BELTRAN was moved in June 1991 from San Diego, California to the Hidalgo County Jail in Edinburg, Texas. CS-1 related that by September 1991, Homero BELTRAN had been receiving special privileges inside the jail after he had established an agreement with an employee at the jail named " ZAVALA ". ZAVALA allowed Homero BELTRAN to receive contact visits with his wife and family in exchange for money and dried meats.

Brigido MARMOLEJO JR. arranged to meet Homero BELTRAN and reached an agreement to increase the frequency and duration of the visits with Homero BELTRAN's family. Homero BELTRAN was to initially pay Brigido MARMOLEJO JR. $5,000 per month for having 1½ hour visit with his wife and ½ hour visits with his children. The visits at first were in the jail infirmary. Homero BELTRAN would get at least one visit per week, upon the approval of Brigido MARMOLEJO JR..

CS-1 was aware Homero BELTRAN didn't like the arrangement with Brigido MARMOLEJO JR. once it got going. Homero BELTRAN felt he was being shorted and not getting much for his money. Homero BELTRAN

changed his agreement with Brigido MARMOLEJO JR. for Homero BELTRAN to pay $5,000 a month and $1,000 per visit. Visit dates were Saturday, Sunday and Wednesday, usually late in the afternoon, with Homero BELTRAN getting usually about three visits a week. Homero BELTRAN received the money to pay Brigido MARMOLEJO JR. from his brother in law, Juan Antonio GUARDADO. CS-1 is aware Brigido MARMOLEJO JR. received bribe money directly from Homero BELTRAN on at least four occasions. CS-2 related that arrangements for the visits and payments to Brigido MARMOLEJO JR. were usually taken care of by Juan Antonio GUARDADO. Juan Antonio GUARDADO usually paid Brigido MARMOLEJO JR. prior to the visits by Homero BELTRAN's family.

The jail guards started bringing Homero BELTRAN to the jail library for the visits, where Homero BELTRAN would meet with his family. Brigido MARMOLEJO JR.'s personal office was later used, with Brigido MARMOLEJO JR. guarding the door. Mario SALINAS, the chief jailer, would guard the door, if Brigido MARMOLEJO JR. couldn't guard it. Homero BELTRAN was not handcuffed during these visits. CS-2 recalled that the last name of one of the jailers who brought Homero BELTRAN to Brigido MARMOLEJO JR.'s office was " FLORES ". CS-1 and CS-2 recall FLORES had a speech problem and studdered. On several occasions no jail personnel guarded the door to the office while Homero BELTRAN had his conjugal visit. CS-1 and CS-2 observed on several occasions Mario Salinas guarding the door to Brigido Marmolejo's office. JT

CS-1 related Brigido MARMOLEJO JR. also allowed Homero BELTRAN to bring in his girl-friend for contact visits. Homero BELTRAN's girl-friend got pregnant by him during this time, but miscarried the baby. These conjugal visits were also made in Brigido MARMOLEJO JR.'s office.

The family and contact visits continued until Homero BELTRAN was moved to Memphis Federal Prison on about March 1992. The bribe payments to Brigido MARMOLEJO JR. are estimated by CS-1 and CS-2 for this timeframe to be in excess of $100,000.

According to CS-2, Homero BELTRAN was brought back to the Hidalgo County Jail sometime in the latter part of 1992. The same arrangement was made with Brigido MARMOLEJO JR. prior to Homero BELTRAN arriving at the jail for continued special treatment.

CS-1 is aware of several other inmates at the Hidalgo County Jail who were also receiving special privileges. Eleazar MORIN and Raul VALLADARES were receiving special favors there at the jail, which included conjugal visits. According to CS-1 VALLADARES was seen frequently leaving his jail cell for extended periods of time during non-visitation hours.

Additionally CS-2 advised in approximately January 1992, Homero BELTRAN had his brother in law, Juan Antonio GUARDADO, purchase a 1989 Pontiac Trans-Am. Homero BELTRAN, no longer wanting the vehicle, asked Brigido MARMOLEJO JR. if he wanted it in lieu of the $5,000 monthly payment. Brigido MARMOLEJO JR. accepted the vehicle and gave the vehicle to his daughter who recently married. The vehicle was previously titled

to Alberto MANZANAREZ. Independent investigation by law enforcement agents has revealed the Pontiac Trans-Am was traded-in to Bert Ogden Motors in Edinburg, Texas, and that Brigido MARMOLEJO JR. was the former owner of the vehicle.

According to CS-2, in December 1991, Juan Antonio GUARDADO gave a 1984 Chevrolet pick-up truck to Mario SALINAS. The truck was red in color and had been registered to German Guzman GONZALEZ.

CS-2 knows Homero BELTRAN, as part of his special privileges, was able to have a party in jail with his family on October 29, 1992. There was a lot of food that had been brought in by Homero BELTRAN's family and some of jailers got some of the food.

CS-1 and CS-2 advised that during the Christmas season 1992, Homero BELTRAN directed Juan Antonio GUARDADO to go to M & R Jewelers and purchase four sets of watches for him to give as gifts to Brigido MARMOLEJO JR., Mario SALINAS and their wives. Two of the captains in the jail area and their wives received the other two watch sets. The total costs for the watches was approximately $9,000.

CS-2 advised that Juan Antonio GUARDADO placed phone calls to a cellular phone Brigido MARMOLEJO JR. had in his county assigned vehicle. These calls were made when GUARDADO could not reach Brigido MARMOLEJO JR. at the Sheriff's office. Independent investigation has revealed Brigido MARMOLEJO JR. has utilized his cellular phone with the phone number (210) 330-9707, to facilitate arranging meetings with Juan Antonio GUARDADO.

In the beginning of 1993, Brigido MARMOLEJO JR. was building a pavilion at his ranch located north of Edinburg, Texas. Brigido MARMOLEJO JR. wanted the pavilion completed in time to have a wedding reception for his daughter in it. According to CS-1 and CS-2, Brigido MARMOLEJO JR. was short on money to complete the pavilion. Homero BELTRAN helped Brigido MARMOLEJO JR. out and gave him $11,000 towards the completion of the pavilion. The money was given to Brigido MARMOLEJO JR. in several installments. A portion of the payment to Brigido MARMOLEJO JR. was currency that was due to Brigido MARMOLEJO JR. for his monthly $5,000 bribe from Homero BELTRAN.

CS-2 was present when Brigido MARMOLEJO JR. had taken Mario SALINAS to his ranch and showed him the pavilion. Brigido MARMOLEJO JR. stated that "if it was not for Homero BELTRAN, I wouldn't have the pavilion".

In January or February 1993, CS-2 related that Brigido MARMOLEJO JR. was worried that DEA was watching the jail. Brigido MARMOLEJO JR. suspended visits for Homero BELTRAN for a week.

CS-1 advised that Homero BELTRAN in 1987 and 1988 had loaned Baudelio TREVINO approximately $400,000 to get his produce business going known as "VALLEY BANANA KING". VALLEY BANANA KING then started its operation in Hidalgo County. TREVINO used some of that money to buy property where a produce shed is located. TREVINO was to pay Homero BELTRAN 1½% interest for the borrowed funds. The funds loaned to Baudelio TREVINO were from illegal drug proceeds Homero BELTRAN had earned from drug trafficking. The

property was being leased to another party and TREVINO was paying Homero BELTRAN from those funds. Homero BELTRAN told Brigido MARMOLEJO JR. how he came about owning a produce shed near Edinburg, Texas, explaining that the property was hidden in the name of his uncle, Heliodoro TREVINO. When Homero BELTRAN first told Brigido MARMOLEJO JR. about wanting to sell the property, Homero BELTRAN told Brigido MARMOLEJO JR. that he would help him out if Brigido MARMOLEJO JR. helped him.

Sometime in March 1993, according to CS-3, who has personal knowledge of the events surrounding the sale of the produce shed and has proven to be credible, Brigido MARMOLEJO JR. took Juan Antonio GUARDADO to the produce shed and talked to the person who was leasing the shed. Brigido MARMOLEJO JR. collected the rent for that month from Joe GARCIA, the lessee. The check was made out to Brigido MARMOLEJO JR. Jose GARCIA was informed by Brigido MARMOLEJO JR. that the owner wanted to sell the property and asked GARCIA if he was interested in buying it. GARCIA told Brigido MARMOLEJO JR. he wanted to buy the property.

As related by CS-1, Homero BELTRAN was informed that GARCIA was interested in buying the property by Brigido MARMOLEJO JR. Sometime in March or April 1993, Brigido MARMOLEJO JR. arranged for GARCIA to meet Homero BELTRAN at the jail. The meeting took place with Homero BELTRAN telling GARCIA the terms he wanted. Brigido MARMOLEJO JR. was present during this meeting. It was agreed between GARCIA and Homero BELTRAN that a value was needed in order for an agreement to be reached. Brigido MARMOLEJO JR.

told them he would arrange to get an appraisal for the property. Homero BELTRAN offered Brigido MARMOLEJO JR. $20,000 for helping him in selling the property and Brigido MARMOLEJO JR. agreed on the amount of the commission.

According to CS-1 and CS-3, Brigido MARMOLEJO JR. collected the April rent check from Joe GARCIA. Of the $6,000 in rents collected by Brigido MARMOLEJO JR. for the two months, $5,000 was kept by him and was applied to what was owed to Brigido MARMOLEJO JR. for his monthly bribe payment. The cashing of the two rent checks made out to Brigido MARMOLEJO JR. has been independently corroborated by your affiant. Brigido MARMOLEJO JR. arranged another meeting between Homero BELTRAN and Jose GARCIA at the jail several weeks after the initial meeting. At the meeting in the jail with Homero BELTRAN, Brigido MARMOLEJO JR. informed both Jose GARCIA and Homero BELTRAN what value the appraiser had reached. An agreement was reached as to the terms of the sale. Homero BELTRAN told GARCIA that the property was not titled in his name and that Homero BELTRAN's uncle, Heliodoro TREVINO, would have to come from Mexico to sign the papers.

CS-2 related that in late May 1993, Brigido MARMOLEJO JR. along with Jesus (Chuy) GUERRERO had a meeting with Juan Antonio GUARDADO at the Holiday Inn, near the airport in McAllen. The sale of the produce shed was discussed. Homero BELTRAN's uncle, Heliodoro TREVINO, was supposed to also be at the meeting, but he did not show up. It was understood between Brigido MARMOLEJO JR. and GUARDADO that Joe GARCIA's down-

payment was suppose to be paid in currency. Brigido MARMOLEJO JR. would take the $50,000 down-payment from GARCIA when the deal was ready to close. The closure of the real estate deal was delayed because Heliodoro TREVINO was not available to sign the closing documents.

According to CS-2, Brigido MARMOLEJO JR. set up a meeting with Juan Antonio GUARDADO in Miguel Aleman, Mexico. Also present at the meeting was Chuy GUERRERO. Brigido MARMOLEJO JR. accused Homero BELTRAN of talking to federal agents about him. GUARDADO told Brigido MARMOLEJO JR. that Homero BELTRAN was not talking about him and not to worry about Homero BELTRAN. Brigido MARMOLEJO JR. told GUARDADO that the grand jury was investigating his chief jailor Mario SALINAS. The grand jury was looking into a $1,500 payment that SALINAS received for special privileges he provided to an inmate at the jail. Brigido MARMOLEJO JR. was visibly upset about the investigation of Mario SALINAS and commented to GUARDADO that he had not eaten in two days. GUERRERO had two receipts which Brigido MARMOLEJO JR. wanted GUARDADO to sign. The receipts were for the rent Brigido MARMOLEJO JR. had collected from Joe GARCIA, the tenant at the produce shed. The receipts were not dated and they were small pieces of paper. Both receipts were written in English and GUARDADO completed them in Spanish. Brigido MARMOLEJO JR. made a statement to GUARDADO that he has always received money from GUARDADO, and that he never received money from Homero BELTRAN. Brigido MARMOLEJO JR.

requested a response from GUARDADO and GUARDADO said "yes" Brigido MARMOLEJO JR. was correct. Also at the meeting in Miguel Aleman, Mexico, GUARDADO brought up the impending sale of the produce shed. Brigido MARMOLEJO JR. responded by telling GUARDADO he didn't want anything to do with that property. Brigido MARMOLEJO JR. commented to GUARDADO that federal agents had gone by to see the person renting the produce shed and talked to the renter about the rent checks.

CS-2 related Brigido MARMOLEJO JR. later met Juan Antonio GUARDADO in Rio Bravo, Mexico on about June 30, 1993. Brigido MARMOLEJO JR. appeared to be very nervous and discussed with GUARDADO about an investigation that was being conducted on him. GUARDADO told Brigido MARMOLEJO JR. that all the attention over Homero BELTRAN was being focused on the arrest of Michael HAMAKER and Brigido MARMOLEJO JR. should not be so concerned about Homero BELTRAN talking to law enforcement about him. Brigido MARMOLEJO JR. told GUARDADO that the wedding of his daughter cost him a lot of money and he also needed money because of had [sic] some legal problems that he had. Brigido MARMOLEJO JR. requested $10,000 from GUARDADO. GUARDADO told Brigido MARMOLEJO JR. he could give him the money, and he would try to get together with Brigido MARMOLEJO JR. as soon as possible. GUARDADO also mentioned to Brigido MARMOLEJO JR. about the jail escape of Raul VALLADARES and VALLADARES being in Mexico. Brigido MARMOLEJO

JR. made the statement that if GUARDADO saw VALLADARES tell him he still owes Brigido MARMOLEJO JR. $350,000.

CS-1 advised that Chuy GUERRERO recently went to the Starr County Jail in Rio Grande City and saw Homero BELTRAN. Sometime in late April 1993, Homero BELTRAN was moved by the U.S. Marshals Service to the Starr County Jail in Rio Grande City, Texas. GUERRERO asked Homero BELTRAN about the $10,000 that Brigido MARMOLEJO JR. wanted. GUERRERO also told Homero BELTRAN not to talk about Brigido MARMOLEJO JR. to federal agents.

Several phone conversations between CS-3 and Brigido MARMOLEJO JR. have been recorded under the supervision of the OCDETF group in McAllen, Texas. Your affiant participated in the recording of these phone conversations. The following is a summary of these recorded conversations.

On May 4, 1993, CS-3 called Brigido MARMOLEJO JR. and asked him what was going on with the sale of the property. CS-3 told Brigido MARMOLEJO JR. he had not heard anything from the sellers of the property. Brigido MARMOLEJO JR. told CS-3 that he had recently seen "TONIO" at the Holiday Inn. Brigido MARMOLEJO JR. mentioned that the person who needed to sign the papers did not show up with "TONIO". Brigido MARMOLEJO JR. made mention that maybe they were scared and hiding out. Brigido MARMOLEJO JR. told CS-3 he was expecting to hear from the sellers.

On May 21, 1993, another phone conversation was recorded with CS-3 and Brigido MARMOLEJO JR. CS-3

asked Brigido MARMOLEJO JR. who was going to collect the rent for the produce shed and if Brigido MARMOLEJO JR. had heard anything from the sellers.

Brigido MARMOLEJO JR. stated he really was not involved in the deal anymore. Brigido MARMOLEJO JR. told CS-3 he could try to see if he had a phone number for CS-3 in order for him to get in contact with the sellers. Within a few minutes CS-3 received a phone call from "TONIO" calling from Monterey, Mexico. "TONIO" mentioned he had just heard from the "Sheriff". "TONIO" wanted to find out if the money was ready. CS-3 explained the papers were with the attorney and would need to be signed by the seller. "TONIO" told CS-3 the seller was unable to come across at this time to sign the documents.

On July 15 & 19, 1993, the OCDETF group of the DEA in McAllen, Texas, conducted a under-cover operation involving Brigido MARMOLEJO JR. Taped conversations with Brigido MARMOLEJO JR. and CS-2 were made on these dates. The conversations between Brigido MARMOLEJO JR. and CS-2 were in Spanish and have been translated to English with the aid of CS-2. The following is a summary of these taped conversations.

On the conversation on July 15, 1993, Brigido MARMOLEJO JR. acknowledged his participation in the sale of the produce shed with Homero BELTRAN and Jose GARCIA. Brigido MARMOLEJO JR. stated he had been in the meeting with Homero BELTRAN and Jose GARCIA at the jail when the real estate deal was being discussed. Brigido MARMOLEJO JR. also acknowledged the existence of the agreement for the $20,000 commission he was to receive

for finding a buyer for the produce shed. Brigido MARMOLEJO JR. also stated he had sent his "compadre" to Jose GARCIA to get the dates on the rent checks which he had collected for Homero BELTRAN. Brigido MARMOLEJO JR. wanted to complete the receipts which he had previously had Juan Antonio GUARDADO sign in Miguel Aleman, Mexico.

Also on the July 15th tape recording Brigido MARMOLEJO JR. was made aware that another individual who had been recently arrested maybe coming to his jail. CS-2 asked Brigido MARMOLEJO JR. if he could make sure this individual was made comfortable if he made it to his jail. Brigido MARMOLEJO JR. responded he would be able to take care of him. However, Brigido MARMOLEJO JR. was concerned that no-one find out about this agreement. Brigido MARMOLEJO JR. was also asked by CS-2 if he could call the Sheriff in Starr County in order to solicit special privileges for Homero BELTRAN at the jail. Brigido MARMOLEJO JR. responded he would call "the man" from Rio Grande, and "the worst he can say is no".

Regarding the jail escape by Raul VALLADARES from the Hidalgo County Jail in April 1993, Brigido MARMOLEJO JR. told CS-2 that a person involved in breaking out VALLADARES had been killed. Brigido MARMOLEJO JR. stated VALLADARES had some of the guys that helped him break out killed. Brigido MARMOLEJO JR. also made reference to "the person who had the gun", receiving $15,000 for his part in the escape.

Brigido MARMOLEJO JR. was also asked about the "white car" he had gotten from Homero BELTRAN. Brigido MARMOLEJO JR.'s response was "No, lets not talk about it".

Brigido MARMOLEJO JR. on July 15, 1993, received from CS-2 $3,000 in U.S. currency as partial payment towards the $10,000 Brigido MARMOLEJO JR. was expecting.

On the under-cover recording conducted on July 19, 1993, Brigido MARMOLEJO JR. received from CS-2 $7,000 in U.S. currency. In this recording Brigido MARMOLEJO JR. again brings up the two receipts he wants Juan Antonio GUARDADO to complete in his own hand-writing. Brigido MARMOLEJO JR. now has the dates from the rent checks and wants GUARDADO to fill in the dates. Brigido MARMOLEJO JR. was concerned that in an investigation regarding the produce shed property the question will asked [sic] why he received the rent in his name. With the completed receipts Brigido MARMOLEJO JR. stated "they can't nail me". Part of this conversation took place in Brigido MARMOLEJO's office at the jail, where the receipts were last seen by CS-2.

Additionally on the July 19th tape recording Brigido MARMOLEJO JR. tells CS-2 he went beyond his budget on his daughter's wedding and spent too much money.

Brigido MARMOLEJO JR. continued by acknowledging he knew what was going on with the Federal Grand Jury which was looking into the jail escape by Raul VALLADARES. Brigido MARMOLEJO JR. stated an employee of his had testified before the grand jury that certain prisoners were receiving special privileges. Brigido MARMOLEJO JR. further stated he was not supposed to know

this information. Brigido MARMOLEJO JR. remarked that "what I do know is what has occurred between Homer and I has not come up", and "as long as only we know about it, they can't screw us". CS-2 asked Brigido MARMOLEJO JR. why Mario SALINAS was being investigated by the grand jury and Brigido MARMOLEJO JR. responded because of a letter that dumped on MARIO and the "STUTTERER".

DEA Special Agent Alan Tittle who has worked with AUSA Greg Surovic on the escape of Raul VALLADARES SR. from the Hidalgo County Jail, informed me that the day after VALLADARES escaped the U.S. Marshall's Service executed a search warrant at VALLADARES' residence. The search warrant was executed on April 19, 1993, at Route 2, Box 144RH, McAllen, Texas. In the search, a letter was found in VALLADARES' office on top of his desk. The letter, written from Raul VALLADARES SR., instructs Juan Antonio SALAZAR to give Edelmiro FLORES envelopes containing $1,500 and $500. The $500 envelope was intended for FLORES, and the other envelope FLORES was to pass on to a person designated on the envelope as "M". A separate envelope containing $1,500 was supposed to be delivered to Mario SALINAS by Juan Antonio SALAZAR. The money in the envelope was currency. In the letter VALLADARES describes Edelmiro FLORES as the tall guard and that he "stutters". The money given to Mario SALINAS was supposed to be for his campaign, but FLORES was not supposed to know SALINAS received the money and vice versa. Testimony by witnesses provided to the Federal Grand Jury investigating the jail escape by Raul VALLADARES corroborates that these instructions to Juan Antonio SALAZAR were

carried out. Your affiant was advised by Special Agent Neoe Dominquez has through personal knowledge and conversations with Mario Salinas has Salina's residence to be #74 Santa Fe, Edinburgh, Texas. JT

This affidavit has been reviewed by Assistant U.S. Attorney Greg Surovic.

DATED: 8/14/93

/s/ John A. Trevino
JOHN A. TREVINO, Special Agent Internal Revenue Service Criminal Investigation Division

Subscribed and Sworn to before me
this 17th day of August, 1993.

/s/ Peter E. Ormsby
Honorable Peter E. Ormsby
UNITED STATES MAGISTRATE